CLERK'S COPY.

Vol. II

TRANSCRIPT OF RECORD

(Pages 487 to 977)

Supreme Court of the United States

OCTOBER TERM, 1945

No. 14

LLOYD C. DUNCAN, PETITIONER,

vs.

DUKE PAOA KAHANAMOKU, SHERIFF OF THE CITY AND COUNTY OF HONOLULU

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 29, 1944.

CERTIORARI GRANTED FEBRUARY 12, 1945.

No. 10763

United States

Circuit Court of Appeals

For the Ninth Circuit.

DUKE PAOA KAHANAMOKU, Sheriff of the City and County of Honolulu,

Appellant,

vs.

LLOYD C. DUNCAN,

Appellee.

Transcript of Record

In Three Volumes

VOLUME II

Pages 487 to 977

Upon Appeal from the District Court of the United States for the Territory of Hawaii

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Rotary Colorprint, 590 Folsom St., San Francisco

After Recess

The Clerk: The return to the writ is as follows:

"The within Writ was received by me on the 31st day of March, A.D. 1944 and is returned executed this 31st day of March, A.D. 1944 upon Duke Paoa Kahanamoku, Sheriff of the City and County of Honolulu, Territory of Hawaii, by exhibiting to him the original Writ and by handing to and leaving with him a certified copy of the same.

Dated at Honolulu, T.H. this 31st day of March, A.D. 1944.

(s) OTTO F. HEINE,
U. S. Marshal, District of
Hawaii." [266]

The Court: All right, Mr. Marshal, the Petitioner is now in your custody.

Mr. Ennis: If the Court please, may I state for the record that the Respondent, in producing the Petitioner pursuant to the writ of the Court, does not waive his objection to the issuance of the writ but maintains his position that, as a matter of law, the writ should not issue where the privilege has been suspended?

The Court: Yes.

Mr. Anthony: If the Court please, I would like now to address myself to the question of whether or not the Petitioner should be enlarged on bail. As this Court knows, persons who have been taken in the custody of military authorities in this Territory have been taken in custody for a variety of reasons, some of which may have been good, some

of which may have been bad. In some instances there have been persons taken into custody because of subversive activities or because of the commission of offenses against the laws of war.

This Court knows, from the disclosure that has been made in the petition and the return, that at the very most the acts of which the Petitioner has been charged, tried and sentenced, under no circumstances could be more than a misdemeanor. In other words, in any known system of law, it is a simple case of assault and battery. The Government has made some effort to enlarge the degree of the offense because, they say, it has violated an order of the Military Governor. [267] That issue we will get to when the cause is tried on the merits. Our position, of course, is that the so-called Military Governor is without authority to decree laws of this nature, and, in fact, the office is non-existent under the Constitution and laws of the United States.

Your Honor, then, has before him a person who, on the face of the petition, has been illegally tried and convicted upon an alleged set of facts which at most would only constitute a simple assault—the character of case that is tried every day in this Court, involving persons down at the Naval reservation, tried every day in the Police Court of Honolulu, involving the common, ordinary affrays and assaults which you may expect in any community. And I might say if such a case were tried in this Court, or any other court of this Territory, incredible as it may seem if the Court would on the facts of this case find the Petitioner guilty, I would

be very much surprised if any Judge of this Court or any Judge of the Police Court would have given the defendant in such a case any more than a ten dollar fine, or something of that nature. In other words, what I am getting at is this, that this offense, the very gist of it and the very essence of it, is trivial. Nobody can tell this Court that the mere fact that there may have been a slight brawl down there at the gate at Pearl Harbor Navy Yard was any threat to the power and strength and dignity of the United States.

Under those circumstances, I say that while this case [268] is being tried, there is no reason why this man should not be enlarged upon bail. Your Honor has had before him on a number of occasions exclusion cases. Those cases, if the Court please, have a certain degree of seriousness to the United States, for if a Chinese immigrant is released on bail, loses his identity among other Chinese in the community, the U. S. Marshal may have some difficulty in finding him. I can understand how the Court might be reluctant in such a case to admit a man on bail. Also, I can understand how in a case in which a man had committed a felony this Court might be reluctant to admit a man on bail, particularly when the felony is a serious one and should be properly tried in the courts of the Territory. I can understand how this Court, in a case involving any issue of military security, would be reluctant to admit a man on bail.

These instances that I have referred to, however, are not the case of the Petitioner who sits in this

courtroom. This man has been charged with committing acts which at most constitute a very simple offense.

Now, under these circumstances I submit that there is no prejudice to the Government, none whatsoever; the man cannot, as a phyisal matter, escape from the Territory; he cannot, as a matter of law, harm the Government, for, in the event a ruling of the Court should be that he would be remanded to the military authorities to serve out the balance of his sentence, or rather remanded to the Sheriff [269] to serve out the balance of his sentence, pursuant to the military orders, then what harm has been done? The militarists' ideas of justice in such instance would have been satisfied.

On the other hand, I think we have made a fairly clear case, that the Petitioner has something to talk about. He has got the kind of a case which, under the Constitution and laws of the United States, at most requires an information or an indictment, and certainly demands a trial by jury.

Now, if he is not admitted to bail until the determination of this case, that will mean he will be irreparably injured. Now, I say that is a sufficient reason why now that the writ has issued, now that the body of the Petitioner is in the custody of the Marshal awaiting instructions of this Court, that that is ample reason for permitting this man to be enlarged upon bail pending determination of his cause. Counsel will undoubtedly say that if your Honor enlarges the Petitioner on bail, that he has other cases in which he might represent the United States of similar nature, of illegal

trials and convictions or alleged trials and convictions, that they might be brought to the attention of this Court. My answer to that, if the Court please, is this, that we are dealing with the case of this man who is before the Court; we are not dealing with any vague number of individuals who may be now in prison under military orders. Those cases, if any such cases there are, will be dealt with if and when they are ever presented in Court. [270]

I say that the balance of convenience is not a sufficient argument when you are dealing in terms of the liberty of an individual, and, therefore, I respectfully urge upon your Honor that this man be enlarged upon bail and that the bail be fixed in the sum of $500.

Mr. Ennis: May it please the Court, in answer to the application for release on bond, I have three points to make: one, on the facts appealing to your Honor's discretion; two, on the law; and, three, an alternative to releasing the Petitioner on bond.

Now, on the facts. If Mr. Anthony had stated to your Honor that this case involved either a felony or military security, he would understand the reluctance to release the Petitioner on bond prior to the decision that he was unlawfully held. I assume that your Honor has read the proceedings of the Provost Court which have been annexed as one exhibit to the return. I cannot share Counsel's feelings that the offense of assaulting a military sentry at the main gate of Pearl Harbor, between 10:30 and 11:00 o'clock in the evening—when I understand there is a great deal of traffic at that

place when the night shift is going on—with the intent to interfere with the official duties, is a trivial offense or is a misdemeanor. Mr. Anthony says that under any known system of law it would be a misdemeanor. Now, the only system of law which deals with such offense is the military law. And I believe that for one in the Armed Services who [271] assaults a sentry, that is punishable by five years in peacetime and even by death in time of war, which indicates that the offense is not considered as a trivial one or as a misdemeanor. Also, the order under which the Petitioner was tried provides for a penalty, I believe, up to five years in prison.

Now, under our Federal system any sentence of a year or over is considered as a felony; and I think that for purposes of the exercise of your Honor's discretion, in reading the records of the Provost Court which have been annexed for your Honor's information, this case should be looked upon as a felony, and the rule that Counsel suggested, namely, judicial reluctance to release a person convicted of a felony, should be applied.

Now, on the facts. As I said, if your Honor will read that record, I believe that there are no appealing equities in the Petitioner's favor. And I believe there are equities in favor of the attitude of the Government in this situation. And your Honor will, of course, balance the conveniences.

Now, on the side of the Government is the consideration—and a very practical one—that although the Petitioner's own case does not involve one type

of security mentioned by Counsel, namely, a person held by the military authorities as a danger to security, it does involve security in a different and larger sense: the entire Provost Court system clearly, insofar as it regulates violations of such orders [272] as those which prohibit attack on military sentries in an active theatre of war, does involve military security. And I think, unescapably, before your Honor determines and decides to release such a person as the Petitioner in such case, pendente lite, that it will invite other applications for writs solely for the purpose of obtaining similar release pending determination.

Now, that is a valid consideration, and it is also a valid consideration that this is in its nature a kind of a test case, and I submit, your Honor, that the administration of order in the community, as well as the administration of justice in a test case indicates that the individual should not be released by what amounts to a predetermination of the issue before the Court.

Counsel has adverted several times to the civil liberties of the Petitioner. I agree that the civil liberties of the Petitioner are the question in issue, but that is the question for your Honor to decide, and not to pre-judge as Counsel would have the Court do by releasing the Petitioner prior to determination. Those are the considerations on the facts addressed to your Honor's discretion.

Now I would like to address your Honor on one consideration of law. I believe that the purpose of the suspension of the privilege of the writ of

habeas corpus is to prevent the release of persons held by the military authorities for military offenses. And I submit, your Honor, that, as a matter [273] of law, where the Executive Branch of the Government, with the approval of the President, has undertaken to suspend the privilege of the writ, the privilege should not be granted prior to a Court's determination that that attempted suspension is unlawful. In other words, we can't deal with this case as an ordinary case of appealing to your Honor's discretion, because it has the legal element of suspension of the privilege of the writ pursuant to an Act of Congress.

Now, where the return shows, as it does, that the highest military authorities assert to your Honor that the privilege has been suspended, that martial law prevails, and that such cases as the Petitioner's should be dealt with in military courts, as a matter of military necessity, and in conformity to the conditions laid down by Congress, that with all that before your Honor, as a matter of law, the very privilege which has been suspended should not be granted as interlocutory relief.

The third consideration which I want to bring to your Honor's attention, in addition to the balance of facts and the legal proposition, is the substitute for the release of the Petitioner on bond, and that is, that the Government urges upon your Honor that if the Petitioner should not be released prior to your Honor's determination of the very issue of whether he is lawfully held, then the Government should, and we now do, come forward and

say that we want to do everything we can to get your Honor to the position where you can [274] decide that question. In other words, we offer as a substitute for the Petitioner's release at this time that the case be tried at once, and that your Honor reach a decision on the question before your Honor, so that then, at a more proper time, the Court may take up the question of whether the Petitioner should be released from his present custody. Now, we think that, as a matter of normal, practical operations of Government, that the better practice in this situation is to give the Petitioner his trial right away.

We would like to try any issues on Monday. I don't share Counsel's view that this case is going to take a week to try. I certainly know the Government's case isn't going to take more than a da to try. And, of course, I am not aware of what the Petitioner's case is. But I believe we can dispose of the trial of this case in a couple of days. And for all of those considerations the Government urges that the request for release pending the litigation be denied, in view of the fact that the privilege of the writ has been suspended so far as the Executive Department of the Government is concerned, including the President of the United States, pursuant to an Act of Congress.

The Court: Well, the Petitioner is now in the custody of the Marshal. The Marshal has no great facilities for housing anyone as a prisoner. He has a cell in the building here, but it is inadequate for the purpose. I don't want to put the Marshal to

any undue inconvenience. The Marshal [275] would have no right to put the man in jail; he has no means of putting him in jail and issuing any mittimus or any other order that would be safe for any jailer to accept under the circumstances. The thing that the Court is concerned with is whether the Petitioner will respond to and obey any orders of the Court pending the final determination in his hearing. And in view of the location here, the improbability of escape, the impracticability of escape, I believe that a bond of $500 is adequate for that protection.

Mr. Ennis: Well, I'd like to make—excuse me, your Honor.

The Court: Go right ahead, go ahead.

Mr. Ennis: I'd like to make two suggestions, your Honor: one, the Court's reference to the Petitioner being in the Court's custody under the law, that is true, and the Court may place, as the statute provides, the Petitioner in the custody it deems best. It has been my experience in other Federal District Courts, particularly in New York, where I have seen many hundreds of habeas corpus cases, that it is most extraordinary indeed for the Court to change the custody of the Petitioner from that of the Respondent to the U. S. Marshal. I know of no case where that is done unless there is some showing that there is some abusive custody by the Respondent.

The Respondent in this case is an official of the City and County. The Petitioner has not com-

plained that he has [276] been subjected to any mistreatment, and I think that so far as custody is concerned, the ordinary rules should follow and the Petitioner should be left in the Respondent's custody.

Now, turning to the second question, if your Honor feels that apart from the question of facilities—and I think the facilities of the Respondent are adequate—that nevertheless the bail is proper, with your Honor's indulgence I would like to speak to opposing Counsel just a moment on the amount of bail.

The Court: Yes.

Mr. Ennis: If the Court please, of your Honor decides, has decided to fix bail, why first I would like to take exception to bail being allowed in such a case; and, secondly, I would like to suggest that the bail be fixed at $1,000.

The Court: I am of the opinion that the bail of $500 is adequate. Anything more would serve no useful purpose in the nature of bail and would impose a hardship. Five Hundred Dollars is satisfactory, and my mind is satisfied that the Petitioner should have the right of bail. Of course, when I said he was in the custody of the Marshal, I well know that he is in the custody of the Court, but that's the only officer to which the Court can look in a matter of this kind, so that the Court naturally transfers his physical custody to the Marshal.

Mr. Ennis: Well, your Honor, the last point I'd like [277] to make is, of course, one considera-

tion in suggesting the bail, that we do have substantial concern that there might be loose upon the Court a number of petitions of habeas corpus solely to obtain release pending adjudication. That is one consideration. It is just a thousand dollar bail. And I hope in fixing it in this case you will not consider that as a precedent for other cases.

The Court: That is a possibility. But I can't anticipate anything of the kind, and the Court will deal with every case on its own facts and circumstances and merits.

Now, the matter of the release of the Petitioner upon his furnishing a satisfactory bond or bail money in the sum of $500 being settled, when do you want to proceed for a hearing on the writ? The return is in.

Mr. Anthony: The return is on file, your Honor. As you know, it is a rather elaborate document.

The Court: Do you want to file a——

Mr. Anthony (Interposing): I want to file a complete traverse which will take me a little time, and also I'd like to examine a number of facts which I think will be relevant. I would say next Wednesday, if that is convenient for the Court, at nine o'clock. Maybe we can get through with the case in several days. The reason I ask for Wednesday rather than Monday, your Honor, is that I am genuinely of the opinion that if I could have the next several days ironing out the evidence and formal matters, many of which I can agree with [278] Counsel, we can shorten up the actual action of the case.

Mr. Ennis: Well, of course, the Government would like to try it as soon as possible, and we'd be prepared to go on Monday, if your Honor would decide.

Mr. Anthony: Would you have any objection to going on Wednesday?

Mr. Ennis: We have no objection to Wednesday, if that is satisfactory to the Court, and if Counsel can't be prepared sooner than that, but we are very anxious to get the case tried.

The Court: The Court is desirous to move in the matter with expedition. The statute provides that a habeas corpus hearing should be rather summary. It clearly indicates that it should not be a drawn-out affair but should be heard as quickly as can be upon the merits. And I am ready and desirous to go forward and dispose of this case as soon as it can be. I think that Wednesday would be the earliest reasonable time.

Mr. Anthony: If your Honor tells me that I must go to trial Monday, I should do so.

The Court: I don't tell you that, but I am asking you about it. Do you think that if we continued it until Wednesday that it would really aid in an early trial and disposition?

Mr. Anthony: I'm quite satisfied of that, your Honor; instead of the usual delays that might occur, I think we might [279] be able to finish the case up by the end of the week, if I'd be granted that time, to Wednesday. And I might ask, if your Honor would be willing I'd be perfectly willing to go through morning and afternoon sessions. I

know that usually this Court adjourns at 12:30, but if in the interest of summary disposition, as contemplated by the judicial code, your Honor would like to do that, that is perfectly agreeable to me.

The Court: Well, I do occasionally. But with other affairs that take up the recess and lunch hour —and yesterday I was on the bench all day until 4:15 from 8:00 o'clock in the morning on—and it is a rather strenuous day's work, with administrative affairs to look after and correspondence after working hours on the bench, so that I feel and have found from experience with the lawyers as well the Court, that we make just about as much headway with a lengthy half-day session as we do with an all-day session. However, whatever the Counsel agree to in that respect with regard to this case, the Court would be willing to meet.

Mr. Anthony: The Attorney General says that it is agreeable to him to start Wednesday and follow the Court's regular practice as to the hours in attendance.

The Court: Very well, the case is continued, then, until Wednesday next, which is April 5th, at nine o'clock, a. m. Is there anything else before the Court at the present time?

The Clerk: No, your Honor.

Mr. Ennis: If the Court please, so that the Respondent [280] may be instructed, in whose custody will the Petitioner be until the bond is provided?

The Court: In the Sheriff's.

Mr. Anthony: In the Marshal's.

The Court: I mean in the Marshal's. Pardon

me, that was just a slip of the tongue. If the bond or bail isn't forthcoming and the Marshal finds his ward too much of a burden, why we may make him some other provision.

(The hearing adjourned at 11:30 o'clock, a. m.) [281]

I, Albert Grain, Court Reporter, U. S. District Court, Honolulu, Territory of Hawaii, do hereby certify the following:

That I am the official Court Reporter of the above-named U. S. District Court;

That the foregoing is a true and correct transcript of proceedings transcribed by me from notes taken by machine shorthand in Habeas Corpus No. 298, In the matter of the Application of Lloyd C. Duncan for a Writ of Habeas Corpus, held in the above-named Court before the Hon. Delbert E. Metzger, Judge, on March 31, 1944.

Apr. 3, 1944.

ALBERT GRAIN. [282]

[Title of District Court and Cause.]

TRANSCRIPT OF PROCEEDINGS

In the above-entitled matter, held in the United States District Court, Honolulu, Territory of Hawaii, on April 5, 1944, at 9:08 o'clock, a. m. [283]

PROCEEDINGS

The Clerk: Habeas Corpus Docket No. 298, In the matter of the application of Lloyd C. Duncan for a Writ of Habeas Corpus, case called for hearing.

Mr. Anthony: If your Honor please, I presume that the Court has examined the petition, the return and the traverse. Before beginning the hearing, a brief statement might be appropriate in regard to the traverse.

As we read the return, the Respondent seeks to present issues far broader than the issues which are necessary to the adjudication of this case. The Respondent in his return has set up elaborate allegations with reference to the Military Governor's Office, as it is called, of the Territory of Hawaii. This case can be disposed of without that on the petition, but by reason of the fact that these allegations were introduced by the Government in this case, we were obliged to set up in our traverse a denial of the lawful existence of that office.

There are other allegations which, so far as the Petitioner is concerned, are irrelevant to any issue in this case; but again, by reason of the elaborate return and answer to the order to show cause, we have felt obliged to deal with those, and we feel obliged to deal with those issues in the way of evidence. We are ready to proceed with the proof, your Honor, unless Counsel wishes to make a statement at this time. [287]

Mr. Ennis: Well, I will just state very briefly,

your Honor, that the issues are made by the law applicable to the case and not by what either side may have alleged, which is not necessary to the adjudication of the case.

Mr. Anthony: Mr. Duncan, will you take the stand, please?

LLOYD C. DUNCAN,

the Petitioner, appearing in his own behalf, being duly sworn, testified as follows:

Direct Examination

By Mr. Anthony:

Q. Your full name, please?

A. Lloyd Clifford Duncan.

Q. Where were you born?

A. Sheridan, Wyoming.

Q. How old are you, Mr. Duncan?

A. Twenty-five years old.

Q. Where did you go to school—briefly?

A. In Sheridan.

Q. Public schools of Sheridan? A. Yes.

Q. After you left school, where did you seek employment?

A. I worked for my uncle in California, Joe Ross, in a garage for a time, and then I received a job at the Mare [288] Island Navy Yard.

Q. What year was that? A. In 1939.

Q. How long did you work at Mare Island?

A. Well, I worked there approximately two years before coming here.

(Testimony of Lloyd C. Duncan.)

Q. Did you learn any trade while you were there?

A. Yes, a trade of shipfitter.

Q. And you worked as a shipfitter at Mare Island?

A. Yes.

Q. When did you come to the Territory of Hawaii?

A. The 16th of February, 1942.

Q. Did you come under a contract?

A. No, we volunteered to come over here and work.

Q. There was a general request made for mechanics and labor to come to Pearl Harbor, is that right?

A. Well, yes, they needed men immediately to do the work necessitated by the crisis here.

Q. And you responded to that call?

A. Yes.

Q. You have been here ever since?

A. Yes.

Q. And where have you been employed in that Territory of Hawaii?

A. At the Pearl Harbor Navy Yard. [289]

Q. As a shipfitter?

A. Yes.

Q. You worked at your job continually, have you?

A. Yes.

Q. From the time you arrived until just a few days ago?

A. Yes.

Q. Mr. Duncan, in February of this year you were employed as a shipfitter at the yard, were you not?

A. Yes.

Q. What shift did you work on?

A. The 11:00 to 7:30 shift.

(Testimony of Lloyd C. Duncan.)

Q. Is that what they call the graveyard shift?

A. Yes.

Q. You recall, do you not, the incident that happened on the 24th of February of this year?

A. Yes.

Q. On that day, Mr. Duncan, did you meet up with any boyhood friend of yours?

A. Yes, I did.

Q. What was his name? A. Bob Weities.

Q. Where is he from?

A. I met him in Sheridan, Wyoming, about seven years ago, and I have known him ever since.

Q. What was Bob's job?

A. Bob is a quartermaster on a ship and a merchant [290] seaman.

Q. Did you see him on the 24th of February this year? A. Yes.

Q. Did you have dinner together?

A. Yes, we did.

Q. Where did you eat? A. P. Y. Chong's.

Q. Approximately what time did you have dinner? A. About six o'clock.

Q. And after you had dinner, what did you do?

A. Well, we returned to my apartment.

Q. Did you have anything to drink at your apartment? A. Yes, we did.

Q. What did you have to drink?

A. Well, we drank beer and some whiskey.

Q. What time did you leave for your work at Pearl Harbor? A. About nine o'clock.

Q. Did Bob accompany you? A. Yes.

(Testimony of Lloyd C. Duncan.)

Q. How did you get down to Pearl Harbor?

A. We rode an H.R.T. bus.

Q. What time did you get down there?

A. Approximately 9:30.

Q. You were ready for work?

A. Yes. [291]

Q. Your shift began at what hour?

A. Eleven o'clock.

Q. Where was Bob supposed to be going?

A. Well, his ship was tied up in the channel off Aiea landing.

Q. And he had to return to the ship that evening, is that right?

A. Well, yes. I don't usually go to work that early, but he had to be in the yard by ten o'clock, so we left early.

Q. Is there any means of transportation from the gate to Aiea landing?

A. Yes, there is a truck that distributes the merchant seamen around through the yard.

Q. You are quite familiar with that fact?

A. Yes.

Q. And you knew that full well prior to the 24th of February this year? A. Yes.

Q. When you went down to the yard, you went to the main gate, did you? A. Yes.

Mr. Enpis: If the Court please, I wish to object to this line of testimony as having no apparent relevance in this Habeas Corpus proceeding to the issues presented by the pleadings. The Government has no desire to be particularly strict about

(Testimony of Lloyd C. Duncan.)

the admission of testimony, and I have listened for [292] about five minutes and I fail myself to see the relevance of what the Petitioner's dinner companion's activities were on that day.

Mr. Anthony: Just preliminary, your Honor. I will now get to the issue.

Q. Tell the Court in your own words what you and Bob did after you arrived at the gate.

Mr. Ennis: I object, your Honor, on the grounds that apparently Counsel believes that he can retry in this Habeas Corpus proceeding the issue which was tried before the provost court. Now, I think the Supreme Court for a hundred years has had this matter before it, that is, the matter of Habeas Corpus, as to what issues will be tried when the jurisdiction of another court is questioned. And the Supreme Court's decision makes it very clear that the only thing in question is not the facts in the former trial but the question of whether the other court had jurisdiction of the offense and jurisdiction of the person, of the defendant who is seeking habeas corpus.

Now, if it is Counsel's intention by these questions to have the Petitioner recount the incident which resulted in his provost court trial, I think it is clearly inadmissible under the decision. And if that is the line of testimony, I'd like to argue the point at some length, your Honor.

Mr. Anthony: That is my intention, your Honor, and I might say that this Petitioner is charged with having violated a military order. The Petitioner's

(Testimony of Lloyd C. Duncan.)

evidence will show that [293] he violated no military order. That's a fact. And the provost court is without jurisdiction to entertain his trial, irrespective of any other issue in this cause.

Now, I am prepared to argue that, if the Court cares to have argument. But I thought it was fundamental that in a habeas corpus proceeding the Court before whom the Petitioner makes his application is entitled to know the facts and circumstances surrounding the man's incarceration.

Now, I propose to show by this witness just exactly what transpired up until the time he filed his petitioner for habeas corpus, and, indeed, after that.

Mr. Ennis: I would like to be heard on that question, your Honor, because I think it is fairly fundamental matter in the case. The Supreme Court, in numerous habeas corpus cases, even including a case as recent as Ex parte Quiran, indicates rather plainly that the only question it has examined on habeas corpus is whether the court had jurisdiction of the offense, namely, whether in this case a provost court has jurisdiction of the offense of assault by a civilian upon a military sentry on a military reservation.

Now, of course, Counsel, as his petition indicates, may argu that a provost court under the present circumstances has no jurisdiction over that offense. But he cannot try here the question whether the particular facts constituting the offense were committed by Petitioner.

(Testimony of Lloyd C. Duncan.)

Now, as I say, the Supreme Court time after time has [294] repeated that on habeas corpus where a person imprisoned questions the legality of his trial by another tribunal, pursuant to whose judgment he is imprisoned, that the court will only examine the question of whether the offense charged was within that court's jurisdiction and will not examine the question of whether the facts of the particular case prove that offense.

Now, as it happens, the Supreme Court has had occasion in habeas corpus proceedings to consider offenses tried and convictions by military tribunals, such as Courts-Martial, and the rule is precisely the same in those cases. And I think those decisions are directly applicable here.

I have prepared a very brief and informal memorandum on this precise question, which I'd be glad to show your Honor and give Counsel a copy of it, unless you prefer me to present it at some length orally. I don't know what your Honor's practice is or what you feel is the preferable practice in the matter.

The Court: Present the essence of it as briefly as you can.

Mr. Ennis: Well, very briefly. I will hand the memorandum to your Honor for your Honor's convenience. The Supreme Court has repeated in numerous times in habeas corpus cases that the sole inquiry is the jurisdiction of the court, the jurisdiction question, and it has defined repeatedly that

(Testimony of Lloyd C. Duncan.)

[295] jurisdiction means jurisdiction over the person and jurisdiction of the offense.

Now, there is no question but there was jurisdiction of the person in this instance; the Petitioner was present in the provost court; he appeared and there was jurisdiction over his person. The only remaining question is whether there was jurisdiction over the offense. It is clear that the main issue in the case, as the pleadings set it up, is whether there is jurisdiction in the provost court over the offense of the civilian attacking a military sentry with intent to impede him in his official activity. And that question may be raised.

Now, it is a wholly separate and distinct question as to whether on habeas corpus, which explores and searches jurisdiction, the District Court here can examine not only whether there is jurisdiction over that offense in the provost court but whether there is also jurisdiction to retry the particular facts to determine whether that offense was committed.

For example, in Collins vs. McDonald, 258 U.S., involving habeas corpus to review the jurisdiction of the Courts-Martial, the Supreme Court said:

> "Did the court martial which tried and condemned the prisoner have jurisdiction, of his person, and of the offense charged, and was the sentence imposed within the scope of its lawful powers?"

And I have cited a number of cases to the same effect. In Knewel vs. Egan, 268 U. S., the Court states: [296]

(Testimony of Lloyd C. Duncan.)

prior testimony, that you were being called up at least for disorderly conduct?

A. That's the most I thought they could possibly charge me with.

Q. What did you do after you left the hearing or the provost court the first time on March 1st?

A. I went home and went to bed because I had to be [321] back to work that night at 9 o'clock.

Q. Did you make any effort to get the witnesses?

A. Well, they were gone by that time. They are not allowed to reveal the name of their ship, and they don't know when they are sailing, and the only way I have of getting in touch with this man is for him to come and see me. And when they do sail, they are not allowed to notify anybody, and he said he would be back if they were still in port. But he did not come back on the three following days, so he obviously must have left.

Q. What ship was Bol on?

A. I don't remember the name of the ship.

Q. But you do know the name of the ship?

A. I heard of it casually.

Q. Did you make any effort to find out whether the ship was gone?

A. I don't know the name of the ship.

Q. Well, I thought you just stated that you had known the name of the ship?

A. No, I said his ship was tied off the channel at Aiea and I never said anything about knowing the name of the ship.

Q. But did you know the name of the ship?

(Testimony of Lloyd C. Duncan.)

A. I had heard the name but I had forgotten it.

Q. Did you make any effort, after you had been in court the first day, to go down to see if the ship was still [322] in the channel?

A. Well, the names of the ships aren't written on them.

Q. And you just hoped that he'd come in and made no effort to find him?

A. Well, there was nothing I could do to find him; if he didn't come in, I'd have no way of getting in contact with him.

Q. Did you make any effort to get any other witnesses?

A. Well, I didn't think I'd need any witnesses.

Q. But you were told on March 1st by the provost court Judge or someone in the court about witnesses, asked as to whether you had any?

A. Yes. See, when I made the statement I was released: there was nothing said about me being charged later on for any offense. If any consideration had been granted me, then I could have—Bob came back to my house the following day, and if I would have known then that I was going to be tried four days later or three days later, I could have gotten a notarized statement from him then, and even if he had left I would still have some evidence in my favor or to present to the court.

Q. Now, when you appeared on March 2nd, didn't you state to the court, although your witnesses had left, you were ready to proceed with the case?

A. Well, I had no alternative.

(Testimony of Lloyd C. Duncan.)

Q. But you did state that? [323] A. Yes.

Q. Now, at your trial on March 2nd you heard the two marines testify against you, did you not?

A. Yes.

Q. After you heard them testify, after you heard the first one testify, did the court ask you if you wanted to ask him anything? A. Yes.

Q. And you said, no, you didn't? A. No.

Q. Now, after both of the marines testified, you were asked the same question as to whether you wanted to ask them any questions? A. Yes.

Q. And you said you didn't? A. No.

Q. In answer to a question by the court or by the prosecution, which is in the transcript in this way: "You didn't mind your own business in the first instance?"—didn't you answer, "I knew I was wrong?" A. No.

Q. You didn't answer that? A. No.

Q. Now, let me finish the answer. Then you knew, "that if anything happened I would be wrong." A. No, not in that particular place.

[324]

Q. Where did you make that answer?

A. Well, I don't just remember the exact wording of each exact paragraph, and from here I couldn't point out, I can't remember just exactly what transpired of complete words, but I explained to the court that I knew that if anything did happen and I was involved in any accident or argument at all, that I would be assumed wrong.

(Testimony of Lloyd C. Duncan.)

A. I had heard the name but I had forgotten it.

Q. Did you make any effort, after you had been in court the first day, to go down to see if the ship was still [322] in the channel?

A. Well, the names of the ships aren't written on them.

Q. And you just hoped that he'd come in and made no effort to find him?

A. Well, there was nothing I could do to find him; if he didn't come in, I'd have no way of getting in contact with him.

Q. Did you make any effort to get any other witnesses?

A. Well, I didn't think I'd need any witnesses.

Q. But you were told on March 1st by the provost court Judge or someone in the court about witnesses, asked as to whether you had any?

A. Yes. See, when I made the statement I was released: there was nothing said about me being charged later on for any offense. If any consideration had been granted me, then I could have—Bob came back to my house the following day, and if I would have known then that I was going to be tried four days later or three days later, I could have gotten a notarized statement from him then, and even if he had left I would still have some evidence in my favor or to present to the court.

Q. Now, when you appeared on March 2nd, didn't you state to the court, although your witnesses had left, you were ready to proceed with the case? A. Well, I had no alternative.

(Testimony of Lloyd C. Duncan.)

Q. But you did state that? [323] A. Yes.

Q. Now, at your trial on March 2nd you heard the two marines testify against you, did you not?

A. Yes.

Q. After you heard them testify, after you heard the first one testify, did the court ask you if you wanted to ask him anything? A. Yes.

Q. And you said, no, you didn't? A. No.

Q. Now, after both of the marines testified, you were asked the same question as to whether you wanted to ask them any questions? A. Yes.

Q. And you said you didn't? A. No.

Q. In answer to a question by the court or by the prosecution, which is in the transcript in this way: "You didn't mind your own business in the first instance?"—didn't you answer, "I knew I was wrong?" A. No.

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(Testimony of Lloyd C. Duncan.)

Q. Well, here is the way it is in the transcript. Here is the question and answer. Isn't that correct? "You didn't mind your own business in the first instance? Answer. I knew I was wrong."

A. No, I didn't say that.

Mr. Anthony: Speak up so we can hear you, Duncan.

The Witness: No, I didn't say that.

Q. After the two marines testified, did not the court ask you if you wished to make a statement and explained that you had a right to make one?

A. Yes.

Q. And did you make a statement?

A. Well, I just said I'd like to clear up a few details there about the positions that the argument took place in.

Q. Now, in reference to your statement that you would like to clear up a few details, is this a correct transcript of your statement? (Reading.)

"I would like to clear up a few details. My [325] friend and I came through the gate. I was going to work and he wanted to get a truck that would take him to his ship that was berthed at Pearl City. I asked some marine—I don't know who it was—where he could get transportation. The marine told him that he could not go to his ship that way. He was very discourteous about it. I told him not to pay any attention to the marine, because I knew he could catch a truck back to the ship—and he did. Then this marine——".

(Testimony of Lloyd C. Duncan.)

Is that a correct transcript of what you said at that point?

A. No, I already knew where that truck was going and where the transportation was, so I never said in my testimony at all that I asked some marine. I never asked the marine anything.

Q. Well, will you show me, Mr. Duncan, what part of this statement is correct and which part is incorrect?

A. Well, I can't remember the exact words, every exact word that I said. You realize that?

Q. Yes.

A. Well, in the essence here, this first part is correct, "I would like to clear up a few details. My friend and I came through the gate. I was going to work and he wanted to get a truck that would take him to his ship." That was Aiea and not Pearl City.

Q. Pearl City is incorrect here, too?

A. Yes. And that I asked some marine, that is incorrect. I knew where I was going. I didn't ask them. And then this marine, this was Bob that asked the marine about the particular spot that this truck was going. I knew where [320] the truck was going. And the marine told him that he could not get to the ship that way, and he was very discourteous about it. That's what he said.

Mr. Anthony: You'll have to speak up louder; we can't hear you.

Q. Well, now will you read the rest of this answer and tell me if that is substantially what you

(Testimony of Lloyd C. Duncan.)

said to the question by the marine. "Answer. I don't know which one. I didn't pay any attention to the marine. The one marine came over and started arguing about it." Is that right so far? Take your time.

A. In this statement where it says——

Q. Well, is it right as far as I read?

A. Well, yes, I think that is correct.

Q. "——said that he could not get to his ship that way—he would have to go to Pearl City." Did you say "Pearl City" at that point?

A. No, I never said "Pearl City" at all.

Q. Did the marine say "Pearl City?"

A. Yes, the marine said it.

Q. Repeating what the marine said?

A. Yes.

Q. So it is all right down to there? Now, let's continue. "I told him that this friend of mine wanted to catch the truck." Is that correct?

A. Yes. [327]

Q. (Continuing): "This marine, he was getting pretty sore and abusive about it." Did you say that? A. Yes.

Q. "Of course, I knew I was in the wrong."

A. No, I said that I knew I would be held wrong for arguing with him, that if any trouble at all, any friction at all, as far as that goes, then it would be their duty, as an officer of the law, that you would be assumed wrong.

Q. Well, let's continue. Did you say this:

(Testimony of Lloyd C. Duncan.)

"Then he grabbed for my badge like he was going to tear it off, and I slipped to one knee and he pulled my badge off over my head." Is that correct? A. Yes.

Q. So the transcript is correct in some places?

A. In some places.

Q. Let's continue this answer. "Then another fellow came over and took hold of me."

A. No, another fellow never had anything to do with me until I was sitting down.

Q. I don't know what happened. I'm just asking you if this is what you said. Did you say this sentence, "Then another fellow came over and took hold of me?"

A. No, this other marine—no, I didn't say that.

Q. Let's continue the rest of the answer. "He asked me to come over to the gate and sit down, which I did."

A. That was Bowerman that asked me, not the other one. [328]

Q. Did you say this? A. Yes.

Q. Did you say this: "I never resisted them at any time?" A. Yes.

Q. (Continuing): "This man said I was drinking, that's why they had a Navy Doctor examine me, and he pronounced me completely sober." Did you use those words?

A. Yes. But this man said instead of drinking he said I was drunk.

Q. No, but you said, "This man said I was drinking,—" you made that statement?

(Testimony of Lloyd C. Duncan.)

A. I made the statement that this man said I was drunk.

Q. Is this question and answer correct: "Question. After that you were arguing and using obscene language? Answer. It was just about a 50-50 proposition there?"

A. Well, this marine was shaking his club in my face——

Q. I don't want to ask you what happened in Pearl Harbor. What we are trying to get here is that the stenographer who was present did not take down this testimony accurately. So what we are trying to determine here is what questions and answers are correct. Now, is that question and answer correct? You just look at it. Is that what was said at the trial?

A. No, that's the essence but that isn't the exact wording. [329]

Q. Well, according to your recollection, was the question asked, "After that you were arguing and using obscene language?" Is that question correct? Were you asked that question?

A. After what? Now, this whole part here is —"Duncan, you do admit that when one of these marines told Weities that he could not come in through the gate—" —well, that is wrong because that never happened at all. We were already in the gate.

Q. I don't want to ask you that. Did the Prosecutor ask you this question? "Duncan, you do admit that when one of these marines told

(Testimony of Lloyd C. Duncan.)

Weities that he could not come in through the gate you told him that he did not know what he was talking about?" Did he ask you that question?

A. Yes.

Q. All right, now, is this your answer: "Yes, but I did not use profanity?"

A. No, I never told the marine anything.

Q. What did you tell the Prosecutor when he asked you that question?

A. I didn't tell him "yes."

Q. You didn't make this answer: "Yes, but I did not use profanity?" A. No.

Q. What answer did you make?

A. Well, on that question I explained to him there that [330] I had never spoken to the marine at all, that when I said the marine don't know what he was talking about I was talking to my friend, Weities.

Mr. Anthony: Just a minute, your Honor. I'd like to know whether that's what he said at the Provost Court.

Mr. Ennis: Well, I'm trying to get at that.

Mr. Anthony: Is that what you said at the Provost Court?

The Witness: Yes.

By Mr. Ennis:

Q. Now, you have stated that the Prosecutor asked you this question—right? A. Yes.

Q. Now, is it your contention now that you did not make this answer? A. Yes.

Q. What answer did you make?

(Testimony of Lloyd C. Duncan.)

A. That's what I told him, I never spoke to the marine at all, that I had just addressed my remarks to Weities.

Q. Now, we have taken care of that question and answer. Now, let's go to the next question and answer. "After that you were arguing and using obscene language?" Was that question asked you?

A. Yes.

Q. Now, is this your answer: "It was just about a 50-50 proposition there?"

A. Yes, I said that. [331]

Q. Well, now, if you said that answer, Mr. Duncan, isn't that a statement that you were talking to the marine?

A. No, after that. See, this occurred——

Q. But it wasn't at the time you were talking to the marine?

A. After all this was heard, yes, I was talking to the marine.

Q. And the answer was "just about a 50-50 proposition" on the profanity, is that correct? That's the answer you made? A. Yes.

Q. Was that a fact, too? A. Yes.

Q. It's also correct, I understand it, that although you made these statements, you did not question the marines about their story?

A. No.

The Court: We will take a recess at this time.

(A recess was taken at 10:25 a.m.)

(Testimony of Lloyd C. Duncan.)

After Recess

Cross-examination

(continued at 10:40 a.m.)

Mr. Anthony: Your Honor, if I may clear up with Counsel's permission at the moment—I have issued a subpoena addressed to the Governor of the Territory to testify in this case. There is some question whether or not the Attorney General of [332] the Territory will take the position that the Governor is not subject to compulsory process of this Court. And I have assured the Attorney General of the Territory that I'd be very glad to withhold actual mandate of the Court and give him an opportunity to argue that in the event he does care to argue that question before your Honor. I'd just like to tell the Court that now because the Attorney General is present at this hearing. If he does take the position that the Governor is immune from the process of the Court and cannot be obliged to testify, that question can then be argued out at some time that is convenient to your Honor.

Mr. Tavares: If the Court please, we would like to be heard on those questions, and I have asked Mr. Kidwell up here from the Attorney General's Office to argue the point in Court if the Court will permit him to do so. It seems to me that the subpoena of the Chief Executive of the Territory is a matter that does justify some consideration by the Court before he is hailed over here and held to testify.

The Court: Well, I'd be very much interested

(Testimony of Lloyd C. Duncan.)

Q. At the end? A. Yes.

Q. I see. Let's go on to the next part of that answer. Did he say that at the trial?

A. No. He said some of these things but he didn't say them in that order or at that time. [344]

Q. Well, did he say at that time—which are some of the things he said at that time? Just mention them. Look at that paragraph and mention them.

A. Well, he said I refused to sit down and that I'm a civilian and not a service man, you can't arrest me. He said that all that happened when I was out in front and I was sitting on the bench, and he told me to come out in front and I moved out when he told me.

Q. And he did say that you said these things?

A. Yes.

Q. Did he say that all the time you were calling them filthy names and that you said if you ever met up with them you would kill them?

A. Yes.

Q. He said that? A. Yes.

Q. Now, how about the next question and answer? Is that correct?

A. No, he said—the question was: "Bowerman, prior to this altercation did you have occasion to put the defendant under arrest at the time you told him to shove off?" And he said: "No, sir. I told him to shove off and then I turned my back to him." Well, he didn't say that at all but he said: "No, sir. I told him to shove off." What he said

(Testimony of Lloyd C. Duncan.)

at the trial was, "No, sir. I told him to shove off, and then he hit me in the mouth." [345]

Q. That's what he testified to in the trial?

A. Yes. And here he says "I told him to shove off and then I turned my back to him."

Q. Now, look at the next question and answer. Is that correct or in your recollection was a different question and answer asked?

A. Yes, that's——

Q. That's correct? A. Yes.

Q. How about the next one, now? "Question. Did he do either one—proceed on into the Navy Yard, or else leave the gate?" Was that question and the answer to it made at the trial?

A. No, he didn't say that. He said—it says here: "No, sir. He stood right there and argued with me in the middle of the intersection after I told him to step over to the side." He never said anything about moving over at the trial.

Q. Well, how about the next question and answer? "Did he do either one—proceed on into the Navy Yard, or else leave the gate?"

A. That was a question.

Q. How about the answer?

A. Part of the answer is wrong.

Q. What part?

A. Well, he says that "He stood right there and argued [346] with me in the middle of the intersection after I told him to step over to the side."

Q. What part didn't he say?

(Testimony of Lloyd C. Duncan.)

in hearing upon what theory the argument you make, and what, if any, authorities you can present to the Court on that subject.

Mr. Tavares: In other words, your Honor, we don't want the Governor to be in the position of even appearing to disobey the mandate of this Court, and before he is put in that position or put in the danger of either doing that or doing something that we perhaps feel he shouldn't do, that we had [333] better be heard on it.

The Court: Very good.

Mr. Tavares: Of course, if the Court so orders, I don't believe there will be any question of what will be done.

The Court: Do you want to take that up at half-past one this afternoon?

Mr. Anthony: It's agreeable to me, your Honor.

Mr. Tavares: Yes.

Mr. Anthony: I don't know whether the Attorney General, or rather the United States, has any interest in this, but that's agreeable to me.

Mr. Ennis: The time is agreeable, yes, your Honor.

The Court: Let that be set down for argument at that hour, then.

By Mr. Ennis:

Q. Mr. Duncan, I have here the transcript of the testimony before the Provost Court about which you have been testifying, and, so far as we can, I would like you to indicate that part of the testimony which upon your recollection is a correct

(Testimony of Lloyd C. Duncan.)

statement of the questions and answers. Now, taking these preliminary questions by the Court, I believe you have already testified that the first question and answer, and the second question and answer, are correct. Will you look at that and tell me if that is true?

A. Well, the first preliminary questions seem to me to be, the actual questions and answers were longer; they have [334] omitted a lot, maybe not important things, but they have omitted a lot—well, I'm sure they asked me more than that, like: "I asked you yesterday if you had any witnesses and you said that you had two Mainland friends, but that their ship had left. Is that right?" Well, that was supposed to be the remark of the Court. Well, there was more to it than that.

Q. What else?

A. Well, I don't recall the words.

Q. Well, was there anything more in substance than that? A. Yes.

Q. Well, if there was more, will you be able to tell us what it was?

A. Well, I have already explained to you that I don't think any human being can recall the exact words that was said.

Q. I know. But you said that there was something more asked. If you know something more was asked, don't you know what the subject matter was?

A. Well, it was about Counsel and what I could

(Testimony of Lloyd C. Duncan.)

do to get these friends there, and he asked also that if the other men were present, and——

Q. Well, is this preliminary statement correct, the very first paragraph?

Mr. Anthony: Just a minute, your Honor. That's not testimony at all. That's one thing we'd like to know, how [335] that got in the transcript.

Mr. Ennis: Well, I'd like to explain that to Mr. Duncan. Does this first paragraph——

Mr. Anthony: May I address the Court, please? I don't think that Mr. Ennis is competent to explain that. This purports to be what transpired down at the trial. And without any preliminary introduction at all, we have a paragraph that is put in there evidently by the stenographer. We don't know who said what or what happened, and I think neither does Mr. Ennis.

Mr. Ennis: Well, I asked the witness this question: at the beginning of the hearing, did the Court ask you if you desired Counsel?

A. Yes, on the first day.

Q. On the second day, on March 2nd, did the Court ask you that question?

A. If I remember correctly, he made some remark that if I didn't ask for Counsel or didn't have any that we'd proceed.

Q. And what did you say?

A. He asked me if I was ready and I said Yes.

Q. And the Court did mention Counsel and then asked you if you were ready? A. Yes.

(Testimony of Lloyd C. Duncan.)

Q. Did the Court ask you if you had witnesses on the second day? [336] A. Yes.

Q. And what did you tell the Court?

A. Well, I explained at some length what had happened and that I had no way of myself producing them, that under the circumstances I could do nothing else but proceed. I didn't have any idea that I could tell them, well, I wasn't ready and they'd have to wait until I got some witnesses.

Q. What was the last day in which you saw Weities?

A. About the 25th, the day after this incident happened.

Q. Do you know what was the last day your brother saw him?

A. Well, my brother saw him the day before.

Q. Was he at your house on March 1st, the first day you appeared before the Provost Court, or in any day after? A. No, no.

Q. Did your brother see him on March 1st or any day after that? A. No.

Q. Do you know whether any of your friends saw him on March 1st or any day after that?

A. No.

Q. You don't know? A. No.

Q. Well, now, let's go on to the testimony of Marine Corporal Robert Carl Bowerman. You heard Corporal Bowerman give his testimony against you? [337] A. Yes.

Q. And when you were offered the opportunity

(Testimony of Lloyd C. Duncan.)

to question him, you said you had no questions to ask him, is that correct? A. Yes.

Q. Now, will you look at the testimoy, the transcript of the testimony which Corporal Bowerman gave as indicated by this transcript, and tell me whether that is correct in your recollection. Here is a copy (handing witness a typewritten document) you can use yourself, and I will use this one. Are the first preliminary questions correct?

A. To the best of my knowledge, yes.

Q. Well, then, will you turn over to the next page. Is the first question and answer correct?

A. Yes.

Q. Your answer is Yes?

A. No, this is Bowerman's testimony.

Q. Your answer is that the transcript is a correct report of the question and answer, is that correct? That's what he said? A. Yes.

Q. And the second question and answer on that page?

A. That, yes, that's correct. "Your were on duty at that time?" Yes, that's correct.

Q. Now, the next question, which comes to the merits of the case. "Explain the circumstances in your own words surrounding your coming in contact with this defendant." [338] Was he asked that question, just the question? A. Yes.

Q. That is correct?

A. That's right, correct.

Q. Now, will you read the answer he made? And is the first part of that answer what he said?

(Testimony of Lloyd C. Duncan.)

Never mind whether he was telling the truth, but is that what he said?

A. Well, part of it is and part of it isn't.

Q. Well, is it correct down to where the Court made the statement, "Tell everything you know about this?" Are those first eight or nine lines correct?

A. Well, yes, as far as I can remember.

Q. Now, reading beyond that, will you tell me the first place in his testimony that you come to in which, according to your best recollection, he did not say what appears in the transcript in your hands, or the first place where, according to your recollection, something he did say is not reported?

A. Well, he said here, "I told him that there was no bus going to his ship tied up at Pearl City and that Weities could not enter the Yard." He never said that at all.

Q. He didn't say it at the yard or at the trial?

A. He didn't say it at the trial.

Q. I see. You keep that in mind, we are just talking about what he said at the trial. Well, did he say anything else at that point in the testimony instead of that?

A. Well, this is inaccurate in a lot of places as to [339] what actually took place.

Q. We are not talking about what took place in Pearl Harbor?

A. No, I'm talking about the trial.

Q. Fine. I see. It is accurate down to the place that you have mentioned, namely, "I told him

(Testimony of Lloyd C. Duncan.)

that there was no bus," etc.? Is it accurate down to that sentence?

A. Well, you are trying to make me admit that I can remember everything that is said. If something didn't happen that I should remember that, too?

Q. No, here's what I want to do. You have said that the transcript of this testimony is wrong in places. A. Yes.

Q. Now, I think in fairness, if we can, we would like to work out what part, according to your recollection, is correct, so that we will know what part you claim is wrong. And all I want you to do is to tell me what part you think is correct and what part you think is wrong, and according to the best of your ability, I would like you to tell me what you think is left out.

A. Well, I can't remember everything that happened in the exact chronological order. It's impossible. But he says here, the question was: "With his right hand or his left hand? Answer. His right hand come up and struck me in the mouth." Well, there was no testimony which fist hit exactly what place. The testimony at the trial was, the man [340] said that I beat him and I hit him and I slugged him and I kicked him, and I didn't kick him with my left foot on the right shin or anything like that.

Q. So he did not answer, he did not make the answer: "His right hand came up and struck me

(Testimony of Lloyd C. Duncan.)

in the mouth?" He did not make that answer?

A. Well, the general theme of this is wrong, too. I mean what actually took place. This has been rewritten or something, because the actual testimony was different than this. In some places they have actual sentences in it, but they have me saying things here that I never said.

Q. Well, I want to work out with you by going page by page, as well as we can, since you have charged that the transcript is incorrect, it is fair that you should tell us to the best of your recollection in what way it is incorrect and admit in what way it is incorrect.

A. Well, it says here, "Question. One time?" That means how many times I hit him. And his answer was supposed to have been: "Yes, sir—one time he missed, and then he swung and hit me. Then Pfc Hunter jumped in to help me subdue him. He jerked loose and he hit me again below the eye, and he hit Hunter several times."

Q. Didn't he say that at the trial?

A. No. He said that when he told me to move on that I had assaulted him and struck him. There was no mention made about me missing or anything like that. [341]

Q. Did he say that Private Hunter jumped in and helped him?

A. Yes, he said Private Hunter jumped in and helped him.

Q. He did? Did he say that you jerked loose and hit him again below the eye?

(Testimony of Lloyd C. Duncan.)

A. No, he said when I hit him that I was sitting down, that I gave him several uppercuts.

Q. Did he say that you hit Hunter several times?

A. Hunter said I kicked him.

Q. Did Bowerman say that you hit Hunter?

A. Well, I don't remember that.

Q. You don't remember? You don't remember that he didn't say it or do you?

A. Well, no, I can't remember his exact words, everything he said or didn't say.

Q. Well, now, before we leave this page—we are down at the bottom of it—let's go back to this previous paragraph. You remember that he did say that there was traffic coming in and a lot of officers and Navy nurses were coming?

A. Yes, he said that.

Q. And that the Captain of the Yard, Admiral Ghormley—he said that? A. Yes.

Q. This obscenity which he attributes to you, did he say that at the trial? [342] A. Yes.

Q. Did he say that he walked up to you to take your badge for identification?

A. Yes, he did.

Q. And is the rest of it correct? "We always have to secure the badges of those we arrest, and he swung at me and missed me." Did he say that?

A. He said I swung at him and hit him.

Q. Did he say he took you by the arm to get you out of the intersection?

A. We weren't in the intersection.

(Testimony of Lloyd C. Duncan.)

Q. No, but did he say that?

A. Yes, he said that.

Q. Did he say the traffic was tied up?

A. Yes.

Q. And there was confusion? A. Yes.

Q. Did he say that he asked you to give him your badge? A. No.

Q. He didn't say that? A. No.

Q. Did he say that you said you were not going to give him the badge? A. Yes, he said that.

Q. He said that? Did he say that you struck him in the mouth? [343] A. Yes.

Q. He did? A. Yes.

Q. Well, now, turn the page. Do you recall whether the first question and answer was stated as it is reported here?

A. Well, this answer here, where he says, "Yes, sir. There is just a little mark there now. All the time he was cursing and yelling that if he ever got loose he was going to kill us. I finally got his badge from him." Well, where he said where "he was cursing and yelling that if he ever got loose," he said that I was sitting out in front and he pushed me on the bench.

Q. But he made that answer to a question at the trial? Did he say this at the trial?

A. Well, he said that at the trial but not in this place.

Q. Well, in what place did he say this?

A. Well, this sentence here occurred right at the very last.

(Testimony of Lloyd C. Duncan.)

A. Well, that part about "I told him to step over to the side."

Q. He didn't say that?

A. He didn't say that.

Q. Did he say the part about the arrest?

A. Yes, about the badge, "we tried to secure the badge."

Q. With that correction is the answer correct to your best recollection?

A. The answer is wrong.

Q. In that respect?

A. Yes. Here, when he said, "When we put a man under arrest," he said "we always try and secure their badge so they can't escape," were the words he used.

Q. Well, now, how about the next question and answer, did this happen at the main gate at Pearl Harbor, is that correct?

A. Yes, that is correct.

Q. The next question and answer, about wrestling on the pavement, and the answer, "We had to take him off the intersection." Is that correct?

A. Well, we weren't wrestling on the pavement.

Q. But was he asked that question?

A. No, not in those words. I think he used the word [347] "scuffle," "Did you scuffle with this man on the pavement?"

Q. How about the answer? "We had to take him off the intersection." Did he say that?

A. I think he said "No."

(Testimony of Lloyd C. Duncan.)

Q. You think he said "No, we didn't have to take him?"

A. No, he just said "No." When he asked him, "Did you have any occasion to wrestle with him on the pavement," the man said "No."

Q. The witness said "No." All right, how about the next question and answer? "Did he resist you at that time?" "Answer. Yes, sir, he was swinging at me." Did he say that?

A. Yes, he said that.

Q. He did? How about the next question and answer? "Did you see him——"

The Court: Are you going all the way through this?

Mr. Ennis: Well, if the Court please, the witness has undertaken to say in a very general way that this transcript is incorrect, and there seems to be no other way to find out what part he admits and what part he doesn't except by going through it.

The Court: All right.

Mr. Anthony: I suggest, your Honor, that there is another way. If this transcript was taken by a competent court reporter, to produce the court reporter; unless this Court is satisfied that the Petitioner has not pointed out errors in the transcript, the Court naturally would accept the production [348] of the court reporter, if there is a court reporter.

Mr. Ennis: Well, I agree to that, your Honor. The Government will prove this transcript, but in

(Testimony of Lloyd C. Duncan.)

addition to proving it I think another purpose is served since the Petitioner has made this quite extraordinary, unusual charge, to find out in just what respects he claims that. I don't think that on the Court records a general charge that the transcript is wrong should be allowed to stand. Although it may appear tedious, it is proper cross examination to try and make it as definite as we can.

The Court: Well, if you can rebut the general charge—what is the value of all the details?

Mr. Ennis: Well, I think it is of value in your Honor's determination on the question to know what his best recollection is.

The Court: All right, follow your own ideas.

Mr. Anthony: Your Honor, I have some witnesses under subpoena. I think we'd better excuse them, as it will probably take an hour or so to do this.

Mr. Ennis: I don't think so. Wait a few minutes and see how far we get.

By Mr. Ennis:

Q. Do you see the last question and answer on that page, Mr. Duncan? A. Yes.

Q. Was Bowerman asked whether he saw you hit Hunter [349] and did he answer Yes, that Hunter was next to him, and did you strike Hunter with your fist? Did he say that?

A. Yes, he said that.

Q. All right, now, let's turn to the next page and see how quickly we can get along with this. How about the next question and answer?

(Testimony of Lloyd C. Duncan.)

A. Yes, I said that.

Q. And the next one? He was asked whether he hit you and he answered he didn't.

A. He said, "Did you have occasion to hit this man in any way during this—" he might have asked that question.

Q. Well, what was his answer? Well, now, come —you recall this incident? Surely the Prosecutor asked the witness whether he hit you when he was testifying that you hit him?

Mr. Anthony: What page of the transcript?

Mr. Ennis: This is the top of page four; it is page four of this, and it is at the bottom of page two according to those page numbers in the middle of the transcript; the top of page four in your copy.

Q. Certainly he was asked whether he hit you and answered he didn't—you recall that?

A. Well, I don't recall that that question was even asked.

Q. You don't? A. No.

Q. Do you recall the next question that is similar? [350] "You never injured him in any way? Answer. No, sir."

A. He might have asked that question, but I don't think he asked the one before that.

Q. How about the next one, that the marine simply told you to shove off, and when you resisted, took you into custody?

A. Yes, he asked that question.

(Testimony of Lloyd C. Duncan.)

Q. How about the next one, whether there was congestion or not, and the answer that there was congestion? A. Yes, that is correct.

Q. And the next one? A. Yes.

Q. And the next answer explaining the system of checking? A. Yes.

Q. How about the next one, "Had the defendant been drinking?" And the answer? Did he describe your condition in that way?

A. No, he never said anything about I could stand on my two feet and take care of myself and that I walked up to the sentry. He said he could smell liquor on my breath.

Q. And that your eyes were bloodshot and your face flushed?

A. Yes, he said that. And that I had the look of an angry man. That's what the man said in the trial, but it doesn't appear there.

Q. Now, do you recall any other questions and answers [351] that were asked of Bowerman?

A. No.

Q. You can't recall that there are any other questions or answers which are missing from his testimony? A. No.

Q. Well, now, did the Court ask you the question, "You may ask the witness any questions," and you answered, "I have nothing to say to him?"

A. Yes.

Q. That is correct? A. Yes.

Q. Now, the next preliminary questions about Hunter? A. Yes.

(Testimony of Lloyd C. Duncan.)

Q. They are all right? A. Yes.

Q. Now, just read down on the next page the questions and answers and tell me as soon as you come to an answer that you think is wrong or a question that you think was not asked.

A. Well, this question, "You had occasion during the performance of your duties to come in contact with the defendant, Duncan?" And his answer was, "Yes, sir. At that time I was checking incoming vehicles, and the defendant came up to me and asked me what we were going to do with his buddy." Well, he never said any of that.

Q. At the trial? A. No. [352]

Q. What did he say?

A. He said, right in this transcript, he said when I was sitting down I was giving Bowerman some trouble, and he came over and helped Bowerman subdue me. He says in here—that's the first time he saw me——

Q. Is that his answer to this question, it should begin with, "Then I saw Bowerman having some trouble with him——" is that part correct right in the middle there? A. Yes.

Q. He said that? A. Yes.

Q. Read from there on. Stop when you come to something that he didn't say.

A. Yes, he said that part.

Q. And he didn't make this preliminary, he didn't say this preliminary part about checking the cars?

(Testimony of Lloyd C. Duncan.)

A. He said I accosted him—well, he didn't say that at all.

Q. He didn't say that in his testimony?

A. No.

Q. How about the next question and answer, "Were there people standing around to hear the profanity?" A. Yes.

Q. The next question and answer?

A. He never said that at all.

Q. How about the question? Was the asked the question, [353] "Were you in close proximity to Bowerman to hear Bowerman say to either shove on or else go into the gate?" Was he asked whether he was near enough to hear it?

A. Yes; he was.

Q. And what did he say? He was at the gate with Bowerman, wasn't he?

A. Well, I don't remember what he said.

Q. Well, do you remember that he didn't say this? Do you remember that he didn't testify that he was near enough to hear what Bowerman said to you? A. He said he was close enough.

Q. He did say that? A. Yes.

Q. O.K. Fine. Do you know about the next question, "do you know whether Bowerman put him under arrest," and the answer, "he put him under arrest?" A. Yes, that is correct.

Q. And the next one, "Did you try to assist Bowerman in the arrest of this defendant?" And the answer, "No, sir. Bowerman had already placed him under arrest." Did he say that?

(Testimony of Lloyd C. Duncan.)

A. No, he didn't say that.

Q. He didn't say that? A. No.

Q. How about the question? Was the question asked?

A. I don't remember that that question was asked or not. [354]

Q. You don't remember? A. No.

Q. Do you remember that it wasn't asked?

A. No.

Q. You don't remember whether any answer was given or not? A. No.

Q. How about the next one?

A. Yes, I think that question was asked.

Q. How about the next question, "did you see Bowerman grab hold of defendant's badge and swing and wrestle him around?"

A. Yes, he was asked that question.

Q. Did he make that answer?

A. Yes, he made that answer.

Q. How about the last question and answer on that page?

A. That question wasn't asked at all.

Q. Do you mean to say that the Prosecutor didn't ask this marine sentry whether or not he or Bowerman struck you?

A. He asked this already up here.

Q. Well, he asked Bowerman but didn't he ask Hunter whether they struck you?

A. He might have.

Q. He might have? You don't remember?

A. No.

(Testimony of Lloyd C. Duncan.)

Q. All right. Turn over the page and let's go ahead with this. [355]

A. On this question, "Did you see any club?" —that never occurred at all.

Q. Well, did you hear the Court say, "Refrain from leading questions?"

A. The Court went at some length to explain to this Attorney that he had been continually leading the witness and that he asked him once again and given him a short reprimand, and another time, if I remember correctly, he reminded him of it.

Q. Did he put it in that language, "Refrain from leading questions?"

A. He said, "You will refrain from the practice, you are leading—or continually leading—the witness, and you will refrain from the practice."

Q. How about the next question and answer?—how did you hold on to the defendant when you arrested him, when he resisted arrest? Did he say that?

A. No, he never asked how they grabbed hold of me or anything like that.

Q. He didn't ask that question? A. No.

Q. And that answer wasn't given?

A. No.

Q. Didn't they at any time ask the witness to explain how they took you into custody?

A. They have already explained it in here. [356]

Q. But they didn't ask it there or didn't they ask this witness? A. No.

Q. Did the Court ask you if you wanted to ask

(Testimony of Lloyd C. Duncan.)

them any questions when they were finished and you answered, "No, sir?"

A. Well, the Court at that time asked me this what it says here: "As I indicated before, you may at this time make a statement if you wish, or you may let the case rest upon the prosecution's evidence. If you wish to make a statement you have the right to do so."

Q. That was explained to you by the Court, wasn't it? A. Well, yes.

Q. Well, is that the statement you made?

A. Well, I don't recall him saying anything about "if you wish," "as I indicated before, you may at this time make a statement, if you wish." He asked me if I'd like to make a statement or say anything, or you may let the case rest upon the prosecution's evidence. He may have said that.

Q. Well, how about your statement? You did make a statement after he made a remark like that at that time?

A. Yes. This next statement by me is incorrect. I did say "I would like to clear up a few details," and that "my friend and I came through the gate. I was going to work and he wanted to get a truck that would take him to his ship that was berthed at Pearl City." I didn't say "Pearl City." [357] I said "Aiea."

Q. O.K. Continue. Do you want to make any other correction in that answer?

A. Yes, "I asked some marine—" none of the rest of that occurred there.

(Testimony of Lloyd C. Duncan.)

Q. And you didn't say any of the rest of that?

A. I never said from here on, "I asked some marine—I don't know who it was—where he could get transportation. The marine told him that he could not go to his ship that way. He was very discourteous about it." I never interrogated any marine.

Q. Did you say, "I told him not to pay any attention to the marine?" A. Yes.

Q. And this was inside Pearl Harbor gate?

A. Yes.

Q. Did you think that was the right thing to do?

A. I told him not to pay any attention to the marine, not violating any rule, but that the marine had given him misinformation and that the man was wrong; whether he would admit it or not, that's immaterial. And I knew what I was doing and I told him that the marine was wrong and get to the truck and he'd be sure to get back, because I knew.

Q. How about the next question and your answer?

A. He asked me which marine, and I said I don't know. I didn't pay any attention to which marine it was. And then [358] this one marine, Bowerman, came over. That part occurred.

Q. That is correct? That's what you said?

A. Yes.

Q. "——and started arguing about it—said that he could not get to his ship that way—he would have to go to Pearl City." Did the marine say

(Testimony of Lloyd C. Duncan.)

"Pearl City" when you said "Aiea?" The marine used the word "Pearl City", didn't he?

A. Well, the ship wasn't at Pearl City. It was at Aiea. Whether they used the word "Pearl City", I don't remember.

Q. How about the rest of that language? "I told him that this friend of mine wanted to catch the truck." Did you speak to the marine at that time?

A. Well, when the marine gave him misinformation, well, I don't know, maybe I'm digressing here but I have to explain it in my own way. When the marine told him he couldn't go in the yard, he'd have to go around, why then I told him that this was the truck; I knew it was; and he wanted to go back. And the marine asked me why I was butting in, and I explained to him that I knew where he was going and what he had to do, and the marine got abusive because I contradicted him.

Q. Well, now, that's what happened at Pearl Harbor? A. Yes.

Q. Well, let's go back to your answer to the Provost Court. Did you say to the Provost Court that a marine came over and started arguing about it? A. Yes. [359]

Q. And said that he could not get to the ship that way but would have to go to Pearl City? Did you say that to the Provost Court?

A. Yes, I said that.

Q. Then did you say the rest of that answer, "I told him that this friend of mine wanted to catch

(Testimony of Lloyd C. Duncan.)

the truck. This marine, he was getting pretty sore and abusive about it."—you said that, didn't you?

A. Yes.

Q. How about the next sentence: "Of course, I knew I was in the wrong—then he grabbed for my badge like he was going to tear it off, and I slipped to one knee and he pulled my badge off over my head."

A. I didn't say I was in the wrong. I said I knew I'd be held responsible for anything that went wrong.

Q. But the rest of it you said?

A. I mean the marine could arrest me or maybe cause me a lot of trouble for talking back to him.

Q. Well, did you say that the marine grabbed for your badge like he was going to tear it off and you slipped to one knee and he pulled it over your head?

A. I said this marine grabbed a hold of my badge. He didn't ask me for my badge. He just grabbed a hold of it, and jerking me around; it didn't come off and he was jerking me around by the cord I have around ~~my~~ neck with my badge fastened on to it, and I slipped on the pavement there, and [360] he jerked the badge off my head.

Q. You said that at the trial? A. Yes.

Q. Now, look at the rest on the next page, the rest of the answer. Did you say that?

A. No, I never said "another fellow came over and took hold of me."

Q. You didn't say that?

(Testimony of Lloyd C. Duncan.)

A. No. And I did say to Bowerman—that is, "he asked me to come over to the gate, and sit down, which I did. I never resisted them at any time. This man said I was drinking——"

Q. "——that's why they had a Navy Doctor examine me, and he pronounced me completely sober." You did say that? A. Yes.

Q. Now, finish it up. "You mean Corporal Bowerman? Answer. No, the Navy Doctor." Did that occur? A. Yes.

Q. How about the next one? A. Yes.

Q. Then the Court asked you if you wish to ask any questions—no, that was to the Prosecution. That was not to you. I'm sorry. Now, read down there. Are those questions the Prosecution asked you and the answers correct? Well, you said some of them are correct already.

A. Well, this one here, if you will recall just a few [361] minutes ago I said no, that was not correct, that I told my friend, he asked me—the question was, "Duncan, you do admit that when one of these marines told Weities that he could not come in through the gate you told him that he did not know what he was talking about?" I said I made that statement not to the marine but to Weities.

Q. Wieties? A. Yes.

Q. Now, the next question and answer is correct, you testified before?

A. Didn't I explain that to you?

Q. Yes. Did the Prosecution ask you if you

(Testimony of Lloyd C. Duncan.)

had been drinking, and you said, Yes, the day before was your day off? A. Yes, I said that.

Q. And the next question and answer, "Had your friend been drinking also?" Did you say "Yes?" A. Yes.

Q. And did you answer that he had? When you were asked the question, did you answer it?

A. The next one, "You were told to shove off and you started arguing with the marine?" I said that, yes.

Q. How about the last one on that page?

A. He said here, "You do admit that you hit Corporal Bowerman with your fist?"

Q. Did he ask you that?

A. No, he never asked me that, because beforehand the [362] Judge had told him to refrain from asking leading questions.

Q. But he told him that in connection with the marines, not in connection with you?

A. No, he never asked me that question at all.

Q. He didn't ask you that question?

A. No.

Q. Well, then, of course, you didn't make that answer? A. No.

Q. Did you make that explanation any place in the case?

A. Yes, I told him how it was when he grabbed my badge. This man says that I was fighting with him, that I struck him and kicked him and I was beating him, both him and Bowerman at one time, and they were trying to subdue me. So I said that

(Testimony of Lloyd C. Duncan.)

Bowerman grabbed my badge, and I may have resisted him and I was trying to make him let go of me and take his hands off me.

Q. How about the next question and answer on the next page?

A. He has me say "they are" here. I said, "he", because Private First Class Hunter never had anything to do with this until I was sitting down.

Q. Well, did he ask you that question about whether roughing you up was purposeful or accidental, and did you answer you didn't know?

A. I said one of them hit me, in fact, with his club, and then actually at the trial I said it could have been accidental. [363]

Q. You did say that? A. Yes.

Q. That's what you think?

A. But that's not the way they have it here, though. And then I don't remember if it was purposeful or not—I did not say this: "No, I don't know. He had it in his hand. I was not resisting—I went where they told me." Well, none of that occurred right there.

Q. But you did say that you didn't know whether you were hit accidentally or on purpose?

A. I did say that the man hit me across the nose and made my nose bleed, and that it could have been accidental.

Q. Did you say that you went where they told you and gave them your identification?

A. Yes.

(Testimony of Lloyd C. Duncan.)

Q. And that if he had asked for your badge, you would have given it to him? A. Yes.

Q. And you "guess" you were "not moving fast enough for them?"

A. No, this place I explained to you before; that's completely incongruous with this preceding testimony.

Q. But did you say it? A. Yes.

Q. Did you say it at that place?

A. No. [364]

Q. How about the next question and answer? We are nearly finished here. Did you make the statement to the Prosecution, "I didn't like to be kicked around like that. I was not even talking to the marines in the first place. I was all ready to go to work and mind my own business."

A. Yes, I made that statement.

Q. How about the next question and answer? "You didn't mind your own business in the first instance? Answer. I knew I was wrong—that if anything happened I would be wrong." That's the kind of an answer you made, isn't it?

A. No, it wasn't like that. I told him that anything that happened, I would be assumed wrong.

Q. Did you use the word "assumed?"

A. I don't recall just the exact word.

Q. You don't recall the exact word? Now, how about these questions, the general questions that the Court asked you about your place you lived in and where you were employed and department, they are all correct? A. Yes.

(Testimony of Lloyd C. Duncan.)

Q. Down at the bottom about the record about the cigarettes, and your answer, is that correct?

A. Yes.

Q. Now, after those questions and answers by the Court, did anything occur at the end which is not in here?

A. Well, the gist of it. I don't remember actually the words. [365]

Q. You don't remember that there were other questions after these questions by the Court that were asked of you? A. No.

Q. Or of any of the other witnesses?

A. No.

Q. Now, you stated that the Judge acted as if you were guilty before you were tried. What do you mean by that?

A. Well, I assumed that, I thought that my own personal testimony would carry some weight and that there was no tangible evidence that I had beaten up anyone. In fact, the physical odds were in my favor, as far as odds against one man beating two armed marines.

Q. That's what's in your mind? But, Mr. Duncan, you testified—did you finish your answer?

Mr. Anthony: He hasn't finished yet.

The Witness: Well, I was—now you disturbed my train of thought.

Q. Well, let me ask you the question again. You stated that in Court before the trial started the Judge acted as if you were guilty, and I want you to explain not what was in your mind alone but

(Testimony of Lloyd C. Duncan.)

what did the Judge do that gave you that impression.

A. I didn't say this Judge. I think you said—I said that their attitude seemed to the Prosecutor that I was already guilty and that I had no evidence and no witnesses, and I thought my own testimony would carry some weight but that it [366] obviously didn't.

Q. Well, now, how about the Judge's attitude?

A. Well, it was strictly impersonal.

Q. Would you say it was impartial?

A. Well, I can't read his mind.

Q. Well, did you see anything in the Judge's attitude which indicated that he thought you were guilty before you were tried?

A. Yes, he never allowed me—I said I had no witnesses and he never explained to me that maybe he could delay the trial until I could get some witnesses. But he did delay the trial until the Prosecuting witnesses were presented.

Q. Well, you didn't ask him to delay the trial so that you could get the witnesses, did you?

A. Well, I never knew I had any alternative. I should think it would be the Court, as a matter of prestige and knowledge, I should think he would be considerate enough to let you know.

Q. Well, you didn't ask for a lawyer?

A. I didn't think they could possibly charge me with anything more than a disorderly conduct.

Q. How long did you work in Pearl Harbor?

(Testimony of Lloyd C. Duncan.)

A. Well, I worked there 25 months.

Q. Twenty-five months?

A. No, it will be 24 months.

Q. You had gone in the gate at Pearl Harbor night after [367] night or day after day?

A. I had gone through those gates for the last four years and never had even so much as an argument with them.

Q. You know in a general way that it is the duty of the sentry to keep order at the gates?

A. Well, but I wasn't being disorderly. The marine made the issue himself.

Q. But you did know when you were called up before the Provost Court that you were called up in connection with an incident in which, whether you were right or wrong, the marine put you under arrest? A. Yes.

Q. You knew that? And you knew you were being brought up to be tried in connection with that incident? A. Yes.

Q. And you did not ask for a lawyer?

A. No.

Q. But you willingly went on trial without a lawyer? A. Yes.

Q. Mr. Duncan, did you ever ask the Provost Court to retry any part of the case that you thought unfair?

A. No, I—my idea was in my own mind I had committed no crime; I had no motive for committing any crime, and I thought the most they could do would be to charge me—I did talk back to this

(Testimony of Lloyd C. Duncan.)

marine and I was guilty of a misdemeanor—why I was willing to pay for that. [368]

Q. Well, after you were sentenced to six months imprisonment, did you ask for any retrial or did you ask for any reconsideration of your case?

A. I was given no opportunity.

Q. Did you—so far as you know, has your lawyer ever asked for a retrial at the Provost Court case? A. No, I don't.

Mr. Anthony: That is immaterial, your Honor. I think the brother (referring to defendant's brother in Court) here would know, for your own information.

Q. Do you know whether your lawyer asked for a retrial at the Provost Court case?

A. No, I don't.

Q. Did you ask your lawyer to? A. No.

Q. You did not? So, so far as you know, you have not and no one on your behalf has asked for a retrial of that case in the Provost Court, is that correct?

Mr. Anthony: Just a minute. We are going pretty far afield with this nonsense about a retrial in the Provost Court. There is nothing in any General Order that permits any such thing, as Counsel well knows. Those cases are not reviewable, as a matter of right. I can write a nice letter to them. Maybe they'll look the paper over, but you can't have any true retrial in the sense that he has asked the witness.

(Testimony of Lloyd C. Duncan.)

Mr. Ennis: There is no limitation whatever on it, your [369] Honor. And as an individual he has testified here that he thinks now that he was unfairly dealt with. And I think it is perfectly permissible cross examination to ask the witness in testing whether that is his honest conviction, as to whether he has done anything to attempt to have that judgment against him reconsidered by the authorities who pronounced it.

The Witness: Well, if I assume——

Mr. Anthony: Just a minute, Duncan.

The Court: He said "No."

Mr. Ennis: What was your answer to that question?

The Witness: Well, I assume that the man that sentenced me did it from his own, it seemed to me from the evidence to him that I was guilty, and I never knew whether I had an opportunity—he had pronounced the sentence and I was a prisoner so therefore I had no opportunity to do anything about it.

Q. And you haven't, apart from bringing this action, you haven't done anything about it?

A. Well, I was prepared, I felt that—there's my friend Weities outside now. (Referring to a person entering the Court at that time.)

Q. Answer the question.

A. I mean I never knew that I had any witnesses, and my witnesses were gone, and that I had no evidence probably to get another trial, just my own testimony. And it had been disregarded in the

(Testimony of Lloyd C. Duncan.)

first place, so I just went on to jail prepared to serve my sentence. [370]

Mr. Ennis: That's all.

Mr. Anthony: Your Honor, I have some redirect, but I'd like to call some other witnesses that have been waiting around here.

The Court: All right.

Mr. Anthony: Step down now, Duncan.

(Witness leaves the stand.)

Mr. Anthony: Your Honor, the Deputy Attorney, Mr. Kidwell, advises me that it is not convenient to argue that motion for the appearance of the Territorial Governor this afternoon at 1:30. May we fix some other hour in which that can be argued?

Mr. Kidwell: Tomorrow afternoon would be all right. We would like to have it then.

Mr. Anthony: That is satisfactory to me.

The Court: Well, in the event that the Court should rule adversely to your contentions, will it delay the trial any if it is postponed until tomorrow?

Mr. Anthony: No, your Honor.

The Court: Tomorrow afternoon, then, Mr. Clerk, at 1:30 instead of today.

RILEY H. ALLEN,

a witness in behalf of the Petitioner, being duly sworn, testified as follows:

Direct Examination

By Mr. Anthony:

Q. Your name, please? [371]

A. Riley H. Allen.

Q. What is your occupation?

A. I am the Editor of the Honolulu Star-Bulletin.

Q. How long have you lived in the Territory of Hawaii, Mr. Allen?

A. Continually since 1910, except for the years 1918, '19 and '20.

Q. How long have you been the Editor of the Honolulu Star-Bulletin?

A. Since the forming of the two afternoon papers into the Honolulu Star-Bulletin, July 1st, 1912.

Q. Where were you born, Mr. Allen?

A. Colorado City, Texas.

Q. You're an American citizen, of course?

A. I am.

Q. Mr. Allen, as Editor of the Star-Bulletin and as a long-time resident of this community, have you had an opportunity to observe the conduct of the people in this community?

A. I should say in general terms, yes.

Q. Since December 7, 1941, will you please state what has been your observation as to whether or not this community has been an orderly, law-abiding community?

(Testimony of Riley H. Allen.)

Mr. Ennis: Objection, your Honor, on the grounds that that is not relevant to the issues in this case. We are not trying the community, on its law-abidingness.

Mr. Anthony: It is relevant to the paragraph in the [373] return which relates to what the public safety requires, your Honor. I could ask the Court to take judicial notice of what the public safety requires and judicial notice of the fact which we all here in this courtroom know, and that is, that this is a perfectly law-abiding, orderly community and nothing extraordinary has occurred other than the war itself. But rather than have all of that rest in judicial notice, I have decided to put on some proof, which I think is proper.

Mr. Ennis: Your Honor, we do not charge that the community is not an orderly and a law-abiding community, and I think that question is objectionable on that ground. The public safety, in any respect in which the public safety is involved, is only involved with respect to whether public safety requires martial rule and suspension of the privilege of the writ. And the question that is asked is not designed to elicit any information on that subject.

The Court: Apparently Counsel asked that question to emphasize something else. I don't know. Overruled. You may proceed.

Mr. Ennis: Exception.

Mr. Anythony: Do you recall the question, Mr. Allen?

(Testimony of Riley H. Allen.)

The Witness: I'd like to have the reporter read it.

(The Reporter read the last question.)

A. I should like to say that this has been an orderly and law-abiding community.

Q. Business has been conducted normally within the [373] limits of any wartime community's ability to do so?

A. Within the limits of the rules and regulations and restrictions which were observed here voluntarily or otherwise, I think, yes.

Q. Your paper, for instance, has been published continually, has it not? A. That's right.

Q. Theatres, bars, and places of amusement, do you know whether or not they are operated here in the Territory? A. At the present time?

Q. Yes. A. They are.

Q. How long have they been operated, in full operation, since December 7th, do you have any idea?

A. I can't state definitely what length of time the bars were closed, or the theatres, but I think within a relatively short time after December 7, 1941; they resumed operations.

Mr. Ennis: Your Honor, I object. That's rather indefinite. I don't know what the witness means by "a relatively short time."

Mr. Anthony: That's shown in the order, Mr. Ennis. Mr. Allen, at the outbreak of war there was a censorship of the press, was there not, in licensing of the press?

(Testimony of Riley H. Allen.)

Mr. Ennis: I object on the ground that that is irrelevant.

Mr. Anthony: I want to show that it doesn't exist now. [374]

The Court: Overruled.

Mr. Ennis: Exception.

Q. Do you recall, Mr. Allen?

A. There was, under military orders.

Q. The press was first also closed and then they were permitted to operate under license?

A. Some of them were permitted to operate.

Q. Will you state briefly, for the benefit of the Court, how the newspaper stories in regard to the events that have happened in this Territory which are deemed of military significance or public significance, are approved by the military authorities and released for publication?

Mr. Ennis: Objection on the grounds that that is irrelevant. I don't see what bearing on the situation of the public safety the details of the method of censorship has on the issues of the case.

Mr. Anthony: Well, that is just preliminary, your Honor. I've got a lot of material here that I am going to offer in evidence, and I want to prove to the Court that these things passed muster by the military authorities before they were permitted to be published.

The Court: Overruled.

Mr. Ennis: Exception.

The Witness: At the outbreak of war, we were first requested by the Department of Military In-

(Testimony of Riley H. Allen.)

telligence to do our own censoring in cooperation with the military authorities, [375] the statement being that they had full confidence that we would observe the same general rules of voluntary censorship that were enforced throughout the mainland or was in operation throughout the mainland. I requested that at that time so that we could be under no suspension or under no danger of carrying any news or information which might be of value to the enemy or in violation of military secrecy; that the Department of Military Intelligence or the Army appoint an officer or officers or deputy who would examine our newspaper and all issues of it and all matters going into it to see that we kept strictly within bounds. That was done after, I think, two or three days, and at that time two men who were experienced newspapermen then in civilian life were deputized or appointed by the Army to supervise all matters which went into the Honolulu Star-Bulletin, including advertising, news and pictures.

This carried along for some weeks, as I recall, and I was then requested to relinquish, if we could, these two men so that they might take up the duty of censoring the two Japanese billingual newspapers which it was then proposed to reopen. They were, accordingly, shifted from the Honolulu Star-Bulletin to the offices of the two Japanese newspapers, and one of our staff, our managing editor, was asked by the Army if he would assume a semi-official or quasi-official duty of acting for the censorship. This was done, and he has continued to

(Testimony of Riley H. Allen.)

act in that capacity, although there is no official designation [376] of him as such.

At that time, and since that time, we have endeavored at all times to observe the requirements, the rules, both of the national voluntary censorship and of such special restrictions as are considered desirable by the commanding officers of the Army and Navy or other branches of the Service.

Q. Mr. Allen, when the Military and Naval officers hold press conferences and give press interviews, you are permitted to quote them in some cases, are you not?

A. In most cases I should say yes.

Q. For instance, I have in mind an interview which the press had with General Emmons on January 1, 1942, in which General Emmons is quoted as saying:

> "The fortress of Oahu is, Gen. Emmons said, now able, in conjunction with the Navy, to defend Hawaii against any invasion attempt the Japanese at this time are likely able to muster."

Were you present at that interview, do you recall? Wait a minute. I'll hand it to you. (Handing witness a newspaper clipping.)

A. To the best of my knowledge, I was present. I was present at several interviews at which he received the press, and I believe I was present at this time.

Mr. Ennis: What's the date of that interview?

Mr. Anthony: That's January 1, 1943. Now,

(Testimony of Riley H. Allen.)

Mr. Allen, the general press stories relating to the progress of the war, are they cleared by the correspondents through the Military [377] or Naval Intelligence, do you know, before they are published?

A. Most of them are so cleared, where there is any question as to their advisability they are always cleared. And in a number of cases the news stories are based, are actually reproductions of mimeographed releases by the various commands or offices.

Q. Will you please glance through this folder rapidly? (Handing witness a folder.) Are you able to recognize those as newspaper clippings either coming from the Honolulu Star-Bulletin or the Honolulu Advertiser, Mr. Allen? A. Yes.

Mr. Anthony: I'd like to have this folder marked for identification, your Honor.

The Court: Mark it Exhibit 1 for identification, Petitioner's Exhibit No. 1 for identification.

(Received and marked Petitioner's Exhibit 1 for identification.)

Mr. Anthony: I understand that Mr. Ennis may have some objection to some of these items. Possibly we can iron them out, your Honor. That's why I will not endeavor to introduce them at this moment.

Q. Mr. Allen, you recall upon the outbreak of war the blackout restrictions, do you not?

A. Yes, sir.

(Testimony of Riley H. Allen.)

Q. Will you describe briefly what they were, how severe they were? [378]

A. I think they could be described as a total blackout of all civilian lighting not directly connected with such operations as the loading and unloading of vessels. I do not recall whether on the first night after the blitz the harbor itself was lighted for the dispatch of vessels. But for a considerable time thereafter the rest of the city was in darkness except for such areas as were working directly in emergency operations.

Q. There was also a strict curfew imposed, was there not? A. There was.

Q. That you had to be off the street by eight o'clock was it?

A. Eight o'clock, as I recall it.

Q. That situation has gradually been relaxed, has it not? A. Yes, it has.

Q. Can you state briefly what the relaxation has been, do you recall?

A. It has been relaxed in several stages, including the relaxation as to changes, modifications of lighting of vehicles, motor vehicles, and I believe other vehicles; as to lighting of streets, both by areas and by the character of lighting; and also modifications as to the curfew or the time when pedestrians and others without special passes must be off the streets. [379]

Q. At the present time lights are permitted up to ten o'clock, is that not a fact?

A. They are.

(Testimony of Riley H. Allen.)

Q. Mr. Allen, as soon as it was feasible to do so, do you recall that gas masks were distributed to the civilian communities here? A. They were.

Q. And who did that, do you remember, was it the O.C.D.?

A. I believe it was done by the O.C.D. with the cooperation of the military authorities.

Q. And did people actually carry gas masks?

A. They did.

Q. How long did that continue, roughly?

A. I couldn't state in months, but it was a number of months.

Q. Is anybody carrying gas masks now in the City of Honolulu that you know of?

A. I know of one or two who carry them, one member of our staff, an office boy who often appears with his gas mask. I think he's the only one who does to the best of my knowledge.

Q. Is it fair to say that for a year nobody has been carrying gas masks in the civil community?

Mr. Ennis: Objection. I'm sure that Mr. Allen cannot answer that nobody has been carrying gas masks.

Mr. Anthony: Generally.

Mr. Ennis: Oh, generally. One individual can hardly—— [380]

The Court: There is no question but it's a little too broad.

Q. Well, Mr. Allen, can you tell us about when people stopped carrying gas masks around, people generally?

(Testimony of Riley H. Allen.)

A. I think it was in 1943; there was some relaxation of the vigilance of carrying gas masks. I can recall, after the battle of Midway, but——

Q. That was in 1942?

A. That was in June of '42. However, I think that the habit of carrying the mask or the urge to carry it largely passed in '43.

Q. Do you recall in the early days of the war whether or not service personnel carried gas masks and side arms and helmets?

A. As I recall, there was a considerable period during which the men of the Army carried gas masks, but the men of the Navy did not carry them, and I think thereafter both branches of the Service did not carry them.

Q. And for a time is it a fact that you'd see soldiers downtown with their steel helmets on and gas masks in large numbers? A. That is true.

Q. Do you see anything like that today?

A. Occasionally I see a helmet carried at the side. I do not see any masks or any helmets worn except those who are passing through on trucks or otherwise apparently on maneuvers [381] of some sort.

Q. And have you seen any soldiers walking around the city here with gas masks or helmets during the year, we'll say, 1943, except those that you designated as being on maneuvers or passing through?

A. I couldn't state as to that.

Mr. Anthony: That's all.

(Testimony of Riley H. Allen.)

Mr. Ennis: No cross-examination.

Mr. Anthony: Thank you, Mr. Allen.

(Witness excused.)

Mr. Anthony: Will you call Judge Steiner.

HON. HARRY STEINER,

a witness in behalf of the Petitioner, being duly sworn, testified as follows:

Direct Examination

By Mr. Anthony:

Q. What is your name?

A. Harry Steiner.

Q. Where were you born? A. Honolulu.

Q. What is your position at the present time?

A. District Magistrate of Honolulu, First District Magistrate.

Q. How old are you? A. Fifty-three.

Q. Were you in the service during the last war?

[382]

A. I was.

Q. What branch of the service?

A. Infantry.

Q. Judge, how long have you been District Magistrate in Honolulu? A. Twenty years.

Q. Twenty years? Where did you go to school?

A. Punahou and Yale University.

Q. Graduate of Yale Law School?

A. Yale Law School and Yale College.

(Testimony of Harry Steiner.)

Q. Does your family live here?

A. That's right.

Q. And your father lives here?

A. He was until the time of his death.

Q. When did your father come here, by the way?

A. In '82.

Q. The Police Court of Honolulu is one of the busiest courts in this Territory, is it not?

A. It is.

Q. At my request, had you compiled statistics of cases tried in the Police Courts of Honolulu?

A. Yes, I have.

Q. Do you have those with you, Judge?

A. I have them summarized.

Q. I see. You have a memorandum of those cases? A. Yes, I have. [383]

Q. Will you please give us the number of cases that have been tried in the District Court since the war?

A. Since the war there have been 69,582 criminal cases, and 2,641 civil. That makes about 72,000 matters. That is all matters. I might state that does not include all the committments to the Territorial Hospial that I left out.

Q. In addition to your duties as a trial court trying civil and criminal cases, you also have certain statutory duties in regard to the insane, do you not?

A. Yes.

Q. Those cases are not included in the statistics?

A. I have left those out.

(Testimony of Harry Steiner.)

Q. The 72,000 just comprises actual civil and criminal cases tried?

A. Yes. I included the forfeitures.

Q. Yes, forefeitures.

A. Yes, that's included.

Q. That's a criminal case?

A. It's a criminal case.

Q. What kind of cases do you try down there, Judge?

A. Misdemeanors on the criminal side, where the punishment may be anywheres up to a thousand dollars or imprisonment up to one year, or imprisonment and fine. In the civil side, jurisdiction up to $500 in practically all cases. And in certain matters which have been going on for the last six months, involving the landlord, no limit; we have original [384] exclusive jurisdiction between landlord and tenant matters.

Q. Judge, have you got those figures broken down by years? A. Yes, I have.

Q. Could you give us the figures by years?

A. In 1942—these are civil matters—in 1942 there were tried 969 civil cases. In 1943, there were 1,240 cases. And the first three months of this year there have been tried 432, which makes a total of 2,641 civil cases. And as to criminal cases, in 1942, 15,011 tried. In 1943, 43,775. And in the first three months of this year, 11,796—total of 69,582 criminal matters.

Q. Now, Judge, you were on the bench at the outbreak of war, were you not? A. I was.

(Testimony of Harry Steiner.)

Q. Just state briefly what happened to your Court down there?

A. Well, Monday morning we cleared the calendar of the cases that were then to be tried, and at eleven o'clock the order came up from the Military Governor that martial law had been declared.

Q. The Monday following the blitz?

A. Yes, at eleven o'clock on the 8th. And from that time on we ceased to function as to all new criminal matters. We were allowed to finish up the pending criminal cases, and we were allowed to continue with civil matters, in most matters [385] except cases involving the armed personnel and employees working on Government projects.

Q. Where did the Provost Court sit?

A. In the District Court. They used the Courthouse, the equipment, and——

Q. The Court and its facilities?

A. Everything. And we sat with the Provost Judges and helped them merely in an advisory capacity.

Q. How long did this advisory business continue?

A. To my recollection up to September of 1942.

Q. Then there was a relaxation?

A. Upon military order; yes, there was a relaxation.

Q. And then, after March 10th, 1943, you resumed complete jurisdiction, did you not?

A. Not complete.

Q. Not complete? A. No.

(Testimony of Harry Steiner.)

Q. Why was it not complete?

A. Well, we haven't taken over matters of blackout.

Q. Oh, yes. There are defense act regulations.

A. And there are certain individuals, like utility employes, who have been frozen by the Military Governor, and we have no jurisdiction over those individuals.

Q. Oh, you mean you don't try offenses involving the violation of military orders? You don't try any of those cases?

A. That's right. And no offenses involving the utility [386] employees on their work.

Q. You mean to say if a fellow that works for the Hawaiian Electric gets in a fight, you don't try that kind of a case?

A. On their job. Certain individuals, for example, the milk employees, the dairymen, we don't try those.

Q. The milkmen?

A. So I understand. We never have any cases like that.

Q. Do you know the basis for that?

A. No. I haven't a copy of that order, of the March order.

Q. Well, we needn't bother now, Judge. While you were down there in your advisory capacity, did you have occasion to see a great many of those Provost Court cases being tried? A. Yes.

Q. Were there any cases that you ever saw down there that were being tried that the District Court

(Testimony of Harry Steiner.)

could not have handled had it been permitted to do so? A. No, I know of none.

Q. Judge Steiner, you have seen a great many of the phases of the life of this community during your 20 years on the bench, have you not, down there in the Police Court? A. Yes, I have.

Q. What have you to say as to the conduct of this community since the outbreak of war up to the present time?

Mr. Ennis: Objection. It is calling for a general conclusion, your Honor. It has no relevancy to the issue here that I can see.

The Court: Overruled. [387]

Mr. Ennis: Exception.

The Witness: May I go ahead?

The Court: Yes.

A. The conduct has been good, I would say, the general characterization has been very good.

Q. Have you ever seen anything that is unusual or extraordinary other than the fact that there are a lot of people here and a lot of business going on?

A. Nothing whatsoever.

Q. How about the character of the cases that come before your Court, are they any different in any degree than those prior to the war?

A. Just about the same.

Q. Well, have you ever noticed any kind of a case down there in the Provost Court which the District Court of Honolulu could not have handled fully and adequately?

(Testimony of Harry Steiner.)

A. No. I know of no cases that we could have not handled.

Q. How many Judges were there at the outbreak of war? A. Three.

Q. Who were they?

A. Judge Griffith Wight, and Judge Leslie P. Scott and myself, with a fourth as temporary in case of absence or disqualification of one of the regular three Judges.

Q. Wight and Scott were both ex-Army officers, too, in the last war like yourself?

A. They are, that's right, that's right. [388]

Q. You were perfectly ready to go ahead and try all the cases that were brought before the Court, were you not? A. That's right.

Q. And you would have done so but for the imposition of military orders? A. Yes.

Mr. Anthony: That's all.

By the Court:

Q. May I ask, who decided what cases should be brought before your Court or before the Provost Court? A. The Military Governor.

Q. As to each case individually or were they general orders?

A. By a general order. And they had down there in the District Court a coordinator, so that any particular case they could have taken the case from the District Court and given it to the military.

Q. Well, this coordinator, then, as I take it, had or exercised supervision over every criminal case that originated, and he routed it either to your

(Testimony of Harry Steiner.)

Court or to the Provost Court, according to his mind? A. That's right.

Q. That's it? And that officer was appointed by whom? A. By the Military Governor.

The Court: All right.

Mr. Anthony: Did you finish, your Honor?

The Court: Yes. [389]

Q. Do you try cases of assault and battery that occur on military reservations in your Court?

A. We do.

Q. You have concurrent jurisdiction with this Court?

A. We have. But that's civilian personnel.

Q. That's what I mean, where the defendant is a civilian. That's all.

Cross-Examination

By Mr. Ennis:

Q. Were there not cases tried before the Provost Courts for violation of military orders which were not violations of the laws of the Territory, of the County or City? A. That is correct.

Q. Then there were cases tried before the Provost Courts which could not be tried by your Court in the sense that the actions were not offenses under the civil laws which you administered?

A. That's right. But, as I remember, to end the action the local Governor's power is so sweeping as to internal security, I could think of no subject that he couldn't have covered by some local law; but they were actually cases that were not covered, that we have no jurisdiction over except local

(Testimony of Harry Steiner.)

laws; we have no jurisdiction over the Military Governor's orders, or Federal.

Q. But there was conduct and actions of civilians which were violations of military orders which were not also violations of any law you administered, or of any regulation which the Governor had, in fact, issued under the "M-Day" Bill, apart from what he might have issued? [390] A. Yes.

Q. There were such cases? A. Yes.

Q. Tried in the Provost Court?

A. That's right.

Mr. Ennis: That's all, Judge. Thank you.

(Witness excused.)

The Court: Do you have another witness at hand?

Mr. Anthony: Yes, I have two short witnesses that I would like to get rid of; they've been hanging around.

HON. ALBERT M. CRISTY,

a witness in behalf of the Petitioner, being duly sworn, testified as follows:

Direct Examination

By Mr. Anthony:

Q. Your name, please?

A. Albert M. Cristy.

Q. What is your present position, Judge?

A. I am Second Judge of the Circuit Court, First Judicial Circuit.

Q. How long have you held that position?

A. Since the latter part of October, 1926.

(Testimony of Albert M. Cristy.)

Q. Where were you born, Judge?

A. Hudson, Ohio, near Akron.

Q. And you went to the public schools and then to Brown University? [391]

A. I went to the grammar school in Cleveland and the high school in Providence, Rhode Island, and Brown University and Harvard Law School.

Q. Have you ever held any other office in the Territory other than Judge?

A. I was Deputy City and County Attorney from 1915 until 1919.

Q. And you are now Judge of the Circuit Court of the First Circuit? A. Yes.

Q. Judge, were you here at the outbreak of the war?

A. What do you mean by the outbreak of—with Japan?

Q. On December 7th?

A. I have been here; I was in town, yes. I have been constantly in the Territory except for one trip in 1930.

Q. You have been here since the outbreak of war, you have been here up to date?

A. Constantly.

Q. Judge, immediately after the outbreak of war, will you state briefly what happened so far as your Court was concerned, for the benefit of this record?

A. Well, the exact details as to dates and times and exactness—but I can say that on the morning

(Testimony of Albert M. Cristy.)

after the so-called blitz the Judges assembled in Court with the Chief Justice and posted a notice of suspension of business until things were organized. Shortly after that, and during that week or the [392] following week, several conferences were had with officers delegated from the Military Governor's office as to the contribution that the Judges of the Court could make toward assisting, and anything that would be necessary in curtailing their activity for a time being until things were settled down, or acting as assistants in any capacity that their judicial qualifications permitted. And suggestions were made as to how the Judges could conduct their business, both as to continuances and as to setting of cases so as to make the least disturbance or necessity for popular gathering around the Courthouse, but carry on the business of the Court. But we got nowhere for quite awhile.

Q. The Courts were initially closed, you recall that, by military order?

A. Well, it was both by military order and by an order of the Chief Justice of the Supreme Court, acting in cooperation with the suggestions of the military.

Q. Judge, what kind of cases do you handle there, or have you handled, briefly?

A. Well, practically everything in the roster of the Court over there.

Q. That's a general Court of record?

A. It is a general Court of record, and at the particular time of the blitz I think that my calendar

(Testimony of Albert M. Cristy.)

was the Probate and Equity calendar. I wouldn't be positive on that, as to recollection, but I think that that was so. But by reason of the illness of one of the Judges, I was taking on most anything that was [393] available.

Q. You have handled criminal cases, civil cases and jury trials?

A. Oh, last year the criminal calendar was in my division, and we have rotated calendars of all the divisions, all work, regularly.

Q. What have you to say as to your observation on the kind of cases that are coming before the Court now as compared with prior to the war, we'll say?

A. The same type of cases, perhaps with an emphasis on sex cases more than usual in number on the criminal side of the Court. And the other division, the usual civil actions, probate, equity, land court.

Q. Judge, is there any reason that you can think of why any criminal case could not be tried in the Courts of this Territory, if they had jurisdiction?

A. Well, on the contrary, the division last year, as I told you, was the criminal division that my division handled, and we were at all times available not only for the usual calendar arrangements but were able and ready and had the time and the personnel to put on any emergency trial that would be needed. I speak of emergency trial, as we have attempted throughout the year to adjust the trials

(Testimony of Albert M. Cristy.)

so that the witnesses engaged in the war effort or being of military personnel or in any way having a reasonable excuse could be met and their attendance adjusted so as to make it as little inconvenient for their attendance as possible; or to advance cases so as to obtain the testimony of [394] people whose activity ought to be considered. In other words, the calendar was such that, although we had a year practically of very little trial from December, 1941, until the fall of 1942, the criminal calendar which I took over in January, 1942, was what we would call normally a heavy calendar in the sense that there had been an accumulation. But even with that accumulation there was at no time any difficulty of a Prosecutor setting a special emergency trial to accommodate witnesses who might need to be elsewhere later on, or might be lost if their testimony weren't taken.

Q. Judge, is there any reason why the Circuit Court should not have conducted its business within a few weeks after the outbreak of war?

A. I know of none.

Q. Is there anything in the community, that of order or disorder in the community, that prevented that in any way?

A. I heard of no disorder or none was called to the Court's attention that would have hindered the Court from conducting any trial either jury or jury waived.

Q. Well, is it fair to say that the activity of

(Testimony of Albert M. Cristy.)

the Circuit Courts was curtailed only by reason of the military order? A. That is all.

Q. And there was no necessity that you knew of that required the curtailment of those activities?

A. On the contrary, I was one of the Judges picked out as the liaison officer, so to speak, of the Court to attempt to [395] find ways and means to activate business in a more normal way.

Q. Judge, you have observed the people of this community over the past two years and before that. What have you to say of the present conduct of this community?

Mr. Ennis: Objectionable; it is too general, your Honor. I don't know what Counsel means by that question.

The Court: Well, it isn't clear to me.

Mr. Anthony: I'll try to make it a little more specific.

Q. What have you to say as to the order or disorder or law-abidingness or unlawfulness or lawlessness of this community at the present time?

A. Well, I have seen nothing but the ordinary conduct on the street and in the places where people congregate that is affected by the restrictions of various sorts that have been necessary restrictions of conduct. But as to orderliness, I have found nothing out of the way in any part of the community that I have contacted.

Q. Do you know any reason for the trial of civilians in military courts for offenses that don't

(Testimony of Albert M. Cristy.)

actually affect the security of the military establishments?

Mr. Ennis: Your Honor, I object on the grounds that the witness is not qualified as one who might possess the reasons why that is necessary. Obviously, the witness has not been qualified as a military expert.

Mr. Anthony: I am excluding the military cases.

The Court: Read that question back. [396]

(The Reporter read the last question.)

Mr. Anthony: On crimes against the laws of war.

The Court: Overruled.

Mr. Ennis: Exception.

A. Well, we are—including myself and the other Judges that are over there—in the business of sitting as Judges of trials of civilians that are charged with offenses against the general laws, and I see no—I had contact with no reason why we shouldn't be able to function in this community on those kind of cases. And I will add this, that in the conference with the military, taken shortly after the blitz, it was pointed out by me personally to the officer who was in conference that all of the Judges were ready and willing at any intimation from the military establishment that any phase of a case that might come before our Courts that needed to be delayed, or for any other reason had a military aspect to it, that we would be ready and willing and alert to grant continuance, postponement, and investigations of those things, so that there would

(Testimony of Albert M. Cristy.)

be no hampering in any way from the Courts of the Territory, that we presided over anything affecting the military necessities, if that is an answer to your question.

Q. Judge, do you entertain a layman's view on whether or not we are in imminent danger of invasion.

A. I have been trying to find out what they mean by invasion. As a lawyer rather than a layman, the question of invasion doesn't include in my dictionary a sporadic attack or a threat of attack or a desire to attack. [397]

Mr. Ennis: I object to that. The Judge is not qualified to testify as to what American law is. I think no witness is.

The Court: Not qualified as to what?

Mr. Ennis: To testify on the question of American law.

Mr. Anthony: He's talking about the dictionary.

Mr. Ennis: The Judge is answering a question as to what he thinks as a lawyer. Now, I think what American law is, distinguished from foreign law, is a question for us to argue on, not for us to take testimony on.

Mr. Anthony: I don't propose to take testimony on that.

The Witness: I was trying to clarify it. I haven't completed the answer, Mr. Ennis. I'm trying to clarify the background as to how to answer Mr. Anthony's question as a layman on the threat of invasion. I had nothing come to my attention

(Testimony of Albert M. Cristy.)

ever since I've been here, and particularly since the blitz, to indicate that there has been anything that comes within the category of an invasion. But there have been, undoubtedly, for awhile threats of raids. Just how far the planes can fly now for raids from any bases, I am not militarily informed on.

Mr. Ennis: Your statement is as a layman, not as one militarily informed?

The Witness: As a layman who keeps pretty closely in touch with what the military inform me on in their communiques, which I take on their face value until shown the contrary.

Mr. Anthony: That is all. [398]

Cross Examination

By Mr. Ennis:

Q. Judge, I understood you to say that you personally knew of no necessity why civilian offenses should not be tried in your Court?

A. There has been nothing hindering it, from our angle, no, sir.

Q. Now, you are not acquainted, I take it, with the military information or the information in the hands of the military authorities here on any enemy activities, either present or potential, in this Territory?

A. Well, that goes without saying that the military have not taken me into their confidence or shown me their secret files. But I was speaking in my answer about offenses being charged against civilians violating civilian laws. There has been

(Testimony of Albert M. Cristy.)

nothing in the way of trying those cases in any court that I have had contact with, and I have had contact with all the Circuit Courts in this particular city, and with the Judges of the District Court, during the full two years.

Q. Your Court does not have jurisdiction to try offenses by civilians in the form of breaches of military orders, is that correct?

A. Well, the question there comes in, as I understand it, as I understand the law, Mr. Ennis, that those matters should be before the Federal Court and not before the Territorial Court.

Q. But your Court does not have jurisdiction to try those [399] offenses by civilians?

A. That is a matter of law, correct. Our Court would handle only the offenses against the Territorial laws committed any place within the Territory, by an agreement between military and the Courts and the prosecuting officials ever since 1915, since I have been here. Military personnel violating those laws have been turned over to the military for trial, but civilians have been tried in the civilian courts. But as to violating regulations of the military orders by civilians, my understanding of the law is—and I am here to be corrected, or any time—that those are matters before the Federal Court unless they have been taken away by some other method of usurpation.

Mr. Ennis: That is all, Judge Cristy. Thank you.

Mr. Anthony: That is all. Thank you very much.

(Witness excused.)

Mr. Anthony: I have some documentary proof that I'd like to present. I don't know how long your Honor wants to go on. I am perfectly willing to go ahead.

The Court: The time has arrived for a recess, but if you have some particular things that you want to put in, why submit them.

Mr. Anthony: I think I'd like to submit that at the next hearing.

The Court: All right. The Court is adjourned until nine o'clock tomorrow morning as to this case.

(The hearing adjourned at 12:38 o'clock p.m.) [400]

Honolulu, T. H.
April 6, 1944
9:06 o'clock, a.m.

(The hearing was continued.)

The Clerk: Habeas Corpus Docket No. 298, in the matter of the application of Lloyd C. Duncan for a Writ of Habeas Corpus, called for further hearing.

Mr. Anthony: May we proceed, your Honor?

The Court: Yes.

Mr. Anthony: At this time, if the Court please, I'd like to offer in evidence a series of communiques that have been issued by C. W. Nimitz, Admiral, U. S. Navy, Commander-in-Chief U. S. Pacific Fleet and ocean areas, covering the period June 4, 1942, to and including March 30, 1944. I have

the assurance of Counsel for the Government that these are all of the communiques that have been issued by either the Army or Navy out of this area during the period. (Handing the Court a series of mimeographed pages.)

The Court: Received in evidence as Exhibit "B", is it?

The Clerk: "A". It only has been marked.

The Court: How many of them are there? They are bound?

Mr. Anthony: They are bound, your Honor.

The Court: Petitioner's Exhibit "A". That's the first exhibit, is it not?

Mr. Anthony: At this time, if the Court please, I should like to offer in evidence——

The Court: May I ask first, are these dated, each one of them? [401]

Mr. Anthony: I believe they are, your Honor.

The Court: Well, are they presented here in their chronological order?

Mr. Anthony: I presume that is correct. I did not prepare the exhibit. Counsel had it prepared by his principals.

Mr. Ennis: I believe, your Honor, that each set of communiques bears numbers in order.

Mr. Anthony: And they are in chronological order.

The Court: The first one is numbered "41."

Mr. Ennis: Yes. As your Honor has them before you, they are in inverse order.

Mr. Anthony: In other words, the battle of Midway will be the last one on that file.

The Court: No, no, we are out to Palau Island now.

Mr. Anthony: Yes, your Honor.

(Petitioner's Exhibit "A" was received in evidence.)

PETITIONER'S EXHIBIT A

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 41

(For release at
1700 (HWT), Thursday,
30 March 1944).

Strong Pacific Fleet Forces, at dawn Wednesday, 29 March, (West Longitude Date), initiated heavy attacks on the Japanese-held Palau Islands. After discovery of approach of our forces by enemy planes searching from their bases in the Carolines and New Guinea their ships were observed fleeing the area before our units could reach attack positions. Our attacks continue. No further details are as yet available.

C. W. NIMITZ,
Admiral, U. S. Navy,
Commander in Chief, U. S.
Pacific Fleet and Pacific
Ocean Areas.

Petitioner's Exhibit A—(Continued)

Background Information for the Press

Palau Islands are a group of 200 small, heavily wooded, volcanic islands at the Western end of the Caroline chain. Babelthuap Island, the largest in the Palau group, is 142 square miles in area, the second largest land mass in the Carolines and exceeded in size only by Ponape.

The town of Koror, just south of Babelthuap Island is the seat of Japanese administration of the 1500 Caroline Islands which, for administrative purposes, are divided into four districts—Palau, Yap, Truk and Ponape.

The Spanish explorer Magellan came into the South Pacific in 1521, stopping at Guam and the Philippines, but the Palau group was not discovered until 1712 when a band of Spanish missionaries landed on one of the islands. The group was "rediscovered" in 1783 by an Englishman, Capt. Wilson, whose ship the Antelope belonged to the East India Company.

Spain held loose control over the Palau Islands until 1898 when, at the end of the Spanish-American war, Spain sold the Carolines and the Marshalls to Germany. In 1914, however, when Japan joined the Allies to fight Germany, Japan moved in and took over. At the end of the first World War, she was given a Class "C" mandate over the islands.

The natives of the Palau group are Micronesians who are smaller and darker than Polynesians. In 1937 there were 6587 natives, 9530 Japanese and 18 foreigners registered in the Palau Islands. Before

Petitioner's Exhibit A—(Continued)

the war there were two Christian schools in Palau.

Palau Islands lie within one of the rainiest areas of the Pacific, the average total rainfall being some 180 inches per year. Destructive typhoons often hit these islands, flattening houses and uprooting trees. Many installations in the Palau group were destroyed by a great typhoon in 1937.

—2—Palau Background Material

Pigs, cows and chickens were imported by the Spaniards and are raised for food. Taro, sweet potatoes, rice, bananas and papayas round out the native diet. There are no poisonous snakes and the islands are free from the malaria-carrying mosquito.

The principal crop is coconuts and much copra is exported each year. Fishing is also important and tunny-fish and bonita are dried and shipped to Japan for food. Many tortoise shell objects are made by the natives.

The Palau islands are well-known as the home of the Mikimoto culture pearls. Grains of sand are inserted within the shells of young oysters and at the end of nine ~~years, the~~ oysters are opened and the full-grown pearls removed. Before the war, Mikimoto culture pearls were ~~sold~~ in the finest shops of New York, Paris and London.

The island of Anguar, lying to the south, is one of the most important islands commercially. Eight square miles in area, it is one huge phosphate mine whose contents are shipped to Japan for fertilizer and munitions-making. In 1934 some 60,000 tons were shipped to Japan and it is estimated that

Petitioner's Exhibit A—(Continued)

2,400,000 tons comprise the deposit. In pre-war days, Japan obtained one-fifth of her entire consumption from this island.

In the Palau group, as well as the Caroline and Mariana Islands are traces of earthworks, walls and canals which were apparently built by ancient people of superior intelligence and organizing ability. The secret of these ruins has never been solved.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 40

(For Release at 1200 (HWT),
Wednesday, 23 February 1944)

1. The conquest of Eniwetok Atoll was completed on the evening of 22 February (West Longitude Date) with the capture of Parry Island.

The enemy garrison which defended the atoll is estimated at 3,000.

2. A strong Pacific Fleet task force, including several hundred carrier-based aircraft, struck Saipan and Tinian Islands in the Mariana group, on 22 February (West Longitude Date). Further details are not now available.

C. W. NIMITZ,
Admiral, U. S. Navy, Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas.

Petitioner's Exhibit A—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 39

(For release at 1730 (HWT),
Monday, 21 February 1944).

Our forces have captured Eniwetok Island. Enemy resistance has been stubborn, and small pockets of troops are yet to be overcome.

Parry Island is being heavily attacked by our air and surface forces.

Preliminary reports indicate that our overall casualties in the capture of the Eniwetok Atoll as of last night are approximately 150 dead and 350 wounded.

C. W. NIMITZ,
Admiral, U. S. Navy, Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 38

(For release at 1930 (HWT),
Sunday, 20 February 1944).

Our forces have landed on Eniwetok Island and now have possession of the western half of the island. The attack is being carried out by elements

Petitioner's Exhibit A—(Continued)

of the 106th Infantry supplemented by a unit of the 22nd Marines.

Except for Parry Island, the remainder of the atoll is in our hands.

Casualties continue to be light.

C. W. NIMITZ,
Admiral, U. S. Navy,
Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 37

(For release at 1200 (HWT), Sunday, 20 February 1944).

The Pacific Fleet has returned at Truk the visit made by the Japanese Fleet at Pearl Harbor on 7 December 1941, and effected a partial settlement of the debt. The initial approach was undetected.

During attacks on 16 and 17 February (West Longitude Date) our carrier planes destroyed at least 201 enemy aircraft, 127 of which were shot down in combat. More than fifty additional enemy aircraft were damaged on the ground. There was no enemy air opposition on the second day of the attack.

Enemy surface ships sunk included two light cruisers, three destroyers, one ammunition ship, one

Petitioner's Exhibit A—(Continued)

seaplane tender, two oilers, two gunboats, and eight cargo ships. Additional enemy ships probably sunk included one cruiser or large destroyer, two oilers, and four cargo ships.

Shore facilities on the principal islands, including airdrome runways and installations, were thoroughly bombed and strafed.

Our losses were 17 planes. None of our ships was lost, but one sustained moderate damage.

Admiral R. A. Spruance, U. S. Navy, was in overall command of the operation, and Rear Admiral Marc A. Mitscher, U. S. Navy, former Commanding Officer of the Hornet, directed the carrier air attack.

C. W. NIMITZ,
Admiral, U. S. Navy,
Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 36

(For Release at 1300 (HWT), Saturday, 19 February 1944)

Our forces have captured the enemy air base at Engebi and several other islands in the northern portion of the Eniwetok Atoll. Preliminary reports indicate our casualties have been light.

Petitioner's Exhibit A—(Continued)

Assaults on other portions of the atoll are proceeding according to schedule.

C. W. NIMITZ,
Admiral, U. S. Navy,
Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 35

(For release at
1230 (HWT).

The capture of Eniwetok Atoll has been undertaken by forces of the Pacific Ocean Areas. Army and Marine assault troops have landed and established beachheads.

The initial landings took place after strong preliminary attacks by carrier-based aircraft and by heavy ships of the Pacific Fleet. The troops went ashore under the cover of battleship gunfire and with the close support of low flying naval aircraft.

All forces participating are under the immediate command of Rear Admiral R. K. Turner. The amphibious forces are commanded by Rear Admiral H. W. Hill. The assault troops comprising the Twenty-second Marines and elements of the

Petitioner's Exhibit A—(Continued)

106th Army Infantry are commanded by Brigadier Gen. T. E. Watson, USMC.

C. W. NIMITZ,
Admiral U. S. Pacific Fleet,
and Pacific Ocean Areas.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 34

(For Release at 1100 (HWT),
Thursday, 17 February 1944)

At daylight yesterday morning, 16 February (West Longitude Date), powerful naval task forces of the U. S. Pacific Fleet commenced an attack on the Japanese Naval Base at Truk with several hundred of our planes participating. No further details available.

C. W. NIMITZ,
Admiral, U. S. Navy,
Commander in Chief, U. S.
Pacific Fleet and Pacific
Ocean Areas.

Petitioner's Exhibit A—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 32

(For Release at 1230 (HWT),
Sunday, 6 February 1944)

Occupation of the Kwajalein Atoll is nearly complete.

Gugegwe, Bigej, and Eller Islands have been captured after moderate resistance, and several additional undefended islands occupied.

C. W. NIMITZ,
Admiral, U. S. Navy,
Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 33

(For Release at 1230 (HWT),
Tuesday, 8 February 1944)

Organized resistance on Kwajalein Atoll has ceased, and its capture and occupation have been completed.

C. W. NIMITZ,
Admiral, U. S. Navy,
Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas.

Petitioner's Exhibit A—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 29

For release at 1130 (HWT),
Thursday, 3 February 1944).

Our forces have captured Namur and several adjacent islands.

Resistance continues on Kwajalein Island, but we have landed troops and mechanized equipment in force and are proceeding with the annihilation of the enemy.

C. W. NIMITZ,
Admiral, U. S. Navy
Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 30

(For release at 1730 (HWT),
Friday, 4 February 1944).

Operations at the Kwajalein Atoll continue satisfactorily.

Our forces have landed on Ebeye, north of Kwajalein Island. The landing was unopposed but resistance was encountered a short distance inland

Petitioner's Exhibit A—(Continued)

from the beach. We have now occupied half the island.

Two small islands between Kwajalein and Ebeye have been occupied following neutralization of moderate opposition. Gugegwe and Loi Islands, north of Ebeye have been taken under attack by bombing and Naval gunfire, and the enemy is answering our fire.

Resistance on Kwajalein Island continues, but progress is being made. Our casualties continue to be moderate.

C. W. NIMITZ,
Admiral, U. S. Navy,
Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 27

(For Release at 1000 (HWT),
Tuesday, 1 February 1944)

Powerful forces of all types, commanded by Vice Admiral R. A. Spruance, U. S. Navy, have begun operations the objective of which is the capture of the Marshall Islands.

Following intensive preparatory bombardment of enemy installations by carrier-based aircraft and by battleships and light surface units, Army and Ma-

Petitioner's Exhibit A—(Continued)

rine assault forces have initially established beachheads on islands in the vicinity of Roi and Kwajalein Islands, in the Kwajalein Atoll. Installations on Wotje and Maloelap Atolls were heavily-bombarded by carrier aircraft and by surface forces.

All amphibious operations are commanded by Rear Admiral R. K. Turner, U. S. Navy. The assault troops are directed by Major General H. M. Smith, U.S.M.C. The landing attacks in the Roi Island area are being made by troops of the Fourth Marine Division, commanded by Major General Harry Schmidt, U.S.M.C. The landings are being effected in the Kwajalein Island area by troops of the Seventh Infantry Division, commanded by Major General Charles H. Corlett, U. S. Army.

Strong opposition is being encountered in both assault areas. Initial information indicates that our casualties are moderate.

Supporting air attacks are being made at Kwajalein, Maloelap, Wotje, Mille, Jaluit, Eniwetok and Wake by carrier task forces commanded by Rear Admiral M. H. Mitscher, U. S. Navy, by units of the Seventh Army Air Force, commanded by Major General Willis H. Hale, U. S. Army, and by units of Fleet Air Wing TWO commanded by Rear Admiral John D. Price, U. S. Navy. All shore based aircraft in the Gilberts are operating under the direction of Commander Aircraft, Central Pa-

Petitioner's Exhibit A—(Continued)

cific Force, Rear Admiral John H. Hoover, U. S. Navy.

C. W. NIMITZ,
Admiral, U. S. Navy, Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 26

(For release at 1900 (HWT), Sunday, 30 January 1944).

Our carrier task forces today continued their attacks on Kwajalein, Roi, Maloelap and Wotje.

During the day surface forces bombarded the same objectives while carriers extended their operations to include bombing of Eniwetok.

C. W. NIMITZ,
Admiral, U. S. Navy, Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas.

Petitioner's Exhibit A—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 31

(For Release at 1100 (HWT)
Saturday, 5 February 1944)

Kwajalein, Ebeye, and Loi Islands have been captured by our forces.

C. W. NIMITZ,
Admiral, U. S. Navy, Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 28

(For release at 1100 (HWT),
Wednesday, 2 February 1944).

Our forces have captured Roi Island.

Landings have been made on Kwajalein and Namur Islands and the action is progressing favorably. On Namur the enemy has been contained in the extreme northern portion of the island, and at Kwajalein our troops are firmly established and are pushing the enemy back.

Continuous bombardments of beaches by our warships, planes, and landbased artillery enabled

Petitioner's Exhibit A—(Continued)

our forces to make landings on the three principal objectives with little resistance.

We have suffered no Naval losses and casualties are very moderate. It is now apparent that the attack took the enemy completely by surprise.

C. W. NIMITZ,
Admiral, U. S. Navy, Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 24

(For Release at 1330 (HWT), Thursday, 9 December 1943)

Strong forces of the Pacific Fleet attacked Nauru Island with carrier aircraft and ship bombardment on 8 December (West Longitude Date). Further details are not now available.

Liberators of the 7th AAF which raided the Taroa airdrome installations on the morning of 7 December were intercepted over Maloelap by eight enemy fighters. One fighter was shot down. Our

Petitioner's Exhibit A—(Continued)

planes suffered only slight damage. A Liberator of this force also bombed Mille during the same sortie.

C. W. NIMITZ,
Admiral, U. S. Navy, Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 25

(For release at 1600 (HWT), Saturday, 29 January 1944).

Pacific Fleet carrier task forces have made attacks on Marshall Island bases today, including Taroa, Wotje, and Kwajalein.

C. W. NIMITZ,
Admiral, U. S. Navy, Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas.

Petitioner's Exhibit A—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 20

(For release at 1130 (HWT),
Wednesday, 24 November 1943).

Betio island, Tarawa atoll, was captured shortly after noon 23 November, (West longitude date), following a desperate enemy counter-attack which was crushed by troops of the Second Marine Division. Remnants of the enemy are being hunted down on Apamama, Tarawa and Makin atolls. Seventh AAF Liberators continued diversionary attacks in the Marshalls.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 23

(For Release at 1030 (HWT),
Wednesday, 8 December 1943)

Our carrier task forces which attacked enemy installations on Kwajalein and Wotje atolls on 4 December (West Longitude Date) destroyed 72 planes in the air, strafed and burned an undetermined number of medium bombers on the ground; and destroyed or damaged various ground installations on Kwajalein, Ebeye, Roi and Wotje islands.

At Kwajalein they sank two light cruisers, one

Petitioner's Exhibit A—(Continued)

oiler and three cargo transports, and damaged one troop transport and two cargo transports. At Wotje, one cargo transport was damaged.

Our forces, under command of Rear Admiral Charles A. Pownall, successfully fought off vigorous, prolonged aerial and torpedo and bombing attacks. Of one group of seven torpedo planes, six were destroyed by anti-aircraft fire.

One of our ships suffered minor damage. Our aircraft losses were light.

C. W. NIMITZ,
Admiral, U. S. Navy, Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 22

(~~For~~ release at 00 (HWT), December 1943).

Strong carrier task forces attacked the Marshall Islands on 4 December (West longitude date). Due to the necessity for radio silence details are not yet available.

C. W. NIMITZ,
Admiral, U. S. Navy, Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas.

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Petitioner's Exhibit A—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 18

(For Release at 1330 (HWT),
Monday, 22 November 1943)

Our troops have improved their positions on Tarawa and Makin atolls, but are still encountering considerable enemy ground resistance. We have landed on Apamama atoll. Liberators heavily bombed the airdrome area at Nauru Island on 20 November (West Longitude Date) and on 21 November Army Liberators continued diversionary attacks in the Marshalls.

The central Pacific operations are being directed by Vice Admiral Raymond A. Spruance, U. S. Navy. The amphibious forces are under command of Rear Admiral Richmond K. Turner, U. S. Navy.

Landings were made on Tarawa by the Second Marine Division in command of Major General Julian C. Smith, USMC; those on Makin by troops of the 27th Infantry Division, commanded by Major General Ralph Smith, USA. Major General Holland McT. Smith, USMC, is in command of the landing forces.

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Petitioner's Exhibit A—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 19

(For release at 11:30 (HWT),
Tuesday, 23 November 1943).

Our forces have captured Makin. On Tarawa, the Marines have consolidated their positions and are making good progress against enemy concentrations on eastern end of Betio island, with capture assured. The situation on Apamama is well in hand.

Raids are being continued against the Marshalls by carrier aircraft and Army Seventh Air Force Liberators.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 8.

21 August 1942.

Since the initial successful landings in the Solomon Islands by U.S. Forces under the command of Vice Admiral Ghormley, a period of mopping up in order to consolidate our positions has been in progress. Japanese defenders took to the hills and jungle to escape from our forces. There have been daily skirmishes between U.S. Marine patrols and enemy detachments. In these actions both sides have suffered casualties.

Petitioner's Exhibit A—(Continued)

On August 19th the Marines with a loss of 6 killed and 13 wounded wiped out a Japanese detachment of 92 officers and men. Enemy resistance continued until the last man was killed.

On the night of August 20th the enemy landed a force of about 700 well equipped troops from high-speed boats outside of the Marines' lines, and attempted to break through. During darkness only hand to hand fighting was possible but with the breaking of day the Marines were able to maneuver. While one battalion held the front line another battalion moved to the flank and drove the then withdrawing Japanese to the beach. Action continued until late afternoon. Of the 700 Japanese, 670 are dead, the rest prisoners. Marine losses were 28 killed and 72 wounded.

The Marines in the Solomons, who are under the command of Major General Alexander A. Vandegrift, U. S. Marine Corps, have added another page to their history of outstanding achievement.

/s/ C. W. NIMITZ,
Commander in Chief, Pacific
Fleet and Pacific Ocean
Areas.

Petitioner's Exhibit A—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 17

(For Release at
1100 (HWT), Sunday,
21 November 1943).

Army and Marine Corps forces, covered by powerful units of all types of the Pacific Fleet, have established beach heads on Makin and Tarawa atolls, Gilbert Islands; meeting moderate resistance at Makin and strong resistance at Tarawa. Fighting continues. During these operations Army Liberators made diversionary attacks in the Marshalls.

C. W. NIMITZ,
Admiral U.S. Pacific Fleet,
and Pacific Ocean Areas.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 16

(For release at
1200 (HWT), Wednesday,
17 November 1943.)

Late afternoon raids were made on enemy positions on Jaluit and Mille atolls, in the Marshall Islands and on Makin Island, in the Gilberts, on 15 November, West Longitude date, by Liberator bombers of the Army's Seventh Air Force.

Petitioner's Exhibit A—(Continued)

At Jaluit, many fires were started by our bombs in the hangars, shops and dump areas at the seaplane bases on Imieji and Jabor Islands. Of the five ships anchored in the lagoon; one was left burning, three others were possibly damaged.

Several fires resulted from the Mille attack, but cloud conditions prevented accurate observance of damage at Makin.

No air interception was encountered in any instance. Anti-aircraft fire was intense at Mille, weak at Makin and at Jaluit. No damage was suffered by our planes or personnel.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 15

(For Release at 2330 (GCT),
10 October 1943)

Supplementing Pacific Ocean Areas Communique No. 14, the following information is available concerning our operations against Wake Island:

The initial heavy and protracted attack made by carrier aircraft and ship bombardment, beginning at dawn on 5 October, West Longitude Date, was followed late the same afternoon by an attack by a group of Navy Liberator bombers led by Commander John T. Hayward, U. S. Navy, and on the morning of 6 October by a further carrier aircraft

Petitioner's Exhibit A—(Continued)

bombing by the force commanded by Rear Admiral Alfred E. Montgomery, U. S. Navy.

In the extended attacks our planes dropped 320 tons of bombs. An intensive bombardment by the ships combined to inflict considerable damage to enemy installations on Wake, Peale and Wilkes Islands. Enemy defenses were so neutralized in the initial bombardment that the heavy bombers encountered only weak and ineffective anti-aircraft fire and no air opposition in their low altitude bombing attack in the late afternoon of 5 October.

Our forces destroyed 30 or more enemy planes in the air and 31 on the ground. Many fires were started in the plane dispersal areas, shops, barracks, and storage areas throughout the three Islands. Two small vessels, one loaded with gasoline, were destroyed.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 15 (Continued)

Damage by enemy action to our ships and ship's personnel was negligible. We lost 13 planes in combat.

C. W. NIMITZ,
Admiral, U. S. Navy, Commander in Chief Pacific Fleet and Pacific Ocean Areas

Petitioner's Exhibit A—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 14

For Release after
1200 (HWT) 6 October 1943.

A strong Pacific Fleet task force, commanded by Rear Admiral Alfred E. Montgomery, U S N, heavily attacked enemy held positions on Wake Island with carrier aircraft and ship bombardment commencing at dawn on 5 October 1943, West Longitude Date. Further details are not now available.

/s/ C. W. NIMITZ,
Admiral, U. S. Navy, Commander in Chief, Pacific Fleet and Pacific Ocean Areas.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 13

22 September 1943

Supplementing Pacific Ocean Areas Communique No. 12, the following information concerning our operations against enemy installations in the Gilbert Islands region during the night preceding and throughout the day of 19 September, East Longitude Date, is available:

Petitioner's Exhibit A—(Continued)

Attacks were made by carrier-based aircraft and by land-based Army and Navy aircraft from various bases in the Central and South Pacific areas.

More than 200 sorties were carried out by our planes against Tarawa, Makin and Apamama Islands, in the Northern Gilberts, and Nauru Island, west of the Gilbert group.

Damage to the enemy included: At Tarawa: Airdrome facilities heavily damaged, eight bombers destroyed on the runway, one small vessel sunk; at Makin; airbase damaged, three four-engine seaplanes and one other patrol plane destroyed; at Apamama: Enemy camp installations heavily hit; at Nauru: Damage to installations.

In addition to destroying aircraft on the ground, our forces shot down six Zeros, probably destroyed four others and damaged eight more fighters, and shot down two medium bombers.

Despite attempted interception by day and night fighters and intense anti-aircraft fire encountered, our losses totalled only four planes.

C. W. NIMITZ,
Admiral, U. S. Navy, Commander in Chief, Pacific Fleet and Pacific Ocean Areas.

Petitioner's Exhibit A—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 12

For Release after 2200 (HWT)
18 September, 1943.

Strong Pacific Ocean Area forces today conducted heavy raids on the Japanese bases at Tarawa Island, in the northern Gilbert group, and on Nauru Island, west of the Gilbert group.

These operations were carried out according to plan during the night preceding and for a good portion of the day of 19 September, East Longitude Time.

Details of the operations are not immediately available.

/s/ C. W. NIMITZ,
Admiral, U.S. Navy, Commander in Chief, Pacific Fleet and Pacific Ocean Areas.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 11

8 September, 1943.

A task force commanded by Rear Admiral Charles A. Pownall, U.S. Navy, attacked Marcus Island

Petitioner's Exhibit A—(Continued)

at dawn on 1 September, 1943, East Longitude Time. The first wave of the attack apparently caught the enemy completely by surprise. It is estimated that the attack, made in several waves throughout the day, destroyed 80 per cent of military installations on the island. Our losses totalled two fighters and one torpedo plane.

Some anti-aircraft fire was encountered by the initial wave, but was eliminated by succeeding attacks. Fires started throughout the island were still burning the day following the attack.

No enemy planes left the ground. Seven twin-motored bombers which were parked on the runway were destroyed by our fighters. Installations destroyed included hangars, fuel and ammunition storage, shops, and living quarters. The two landing strips were severely damaged by heavy bombs. A small tanker caught near the island was sunk by our bombers.

C. W. NIMITZ,
Admiral U.S. Navy, Commander in Chief, Pacific Fleet and Pacific Ocean Areas.

Petitioner's Exhibit A—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 10

November 16, 1942

By far the strongest Japanese attempt to date to recapture Guadalcanal has been completely frustrated by the aggressive action of Fice Admiral W. F. Halsey and his forces in the South Pacific Area.

The enemy transport force was almost annihilated, so that little if any assistance, reached the Japanese land forces on Guadalcanal. Major General A. A. Vandegrift, U.S.M.C. with his Army, Navy and Marine Corps forces continue to have the situation well in hand.

The strong escorting and bombardment forces of the enemy, comprising a large portion of his fleet, were attacked by our surface forces in two heavy night engagements in the vicinity of Guadalcanal. They were also severely damaged by our aircraft, submarines and motor torpedo boats.

As a result all enemy forces were either destroyed or driven back and a major victory was obtained by our gallant forces.

Reports of own and enemy losses have been announced by the Navy Department.

C. W. NIMITZ,
Admiral, U. S. Navy, Commander in Chief, Pacific Fleet and Pacific Ocean Areas.

Petitioner's Exhibit A—(Continued)

United States Pacific Fleet and
Pacific Ocean Areas
Communique No. 9

15 September 1942.

This afternoon our Army Air Forces in Alaska delivered a most successful attack on enemy shipping and shore installations at Kiska.

Enemy ships and planes in the harbor received direct bomb hits and repeated strafing. At least two naval vessels were sunk. Five enemy fighting planes were shot down in flames and one 4-engine patrol plane was burned on the water.

Installations and storage dumps around the harbor were repeatedly bombed and strafed, resulting in large fires and explosions.

Enemy personnel casualties are estimated at around 500 whereas we lost two pilots as a result of two P-38's colliding in midair.

C. W. NIMITZ,
Admiral, U.S. Navy, Commander in Chief, U.S. Pacific Fleet and Pacific Ocean Areas.

Petitioner's Exhibit A—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 21

(For Release after 1100 (HWT)
Wednesday, 1 December 1943)

Preliminary reports of the Gilbert operations indicate that our landing forces suffered the following approximate casualties:

At Tarawa:
Killed in action.....1,026
Wounded in action.....2,557

At Makin:
Killed in action..... 65
Wounded in action..... 121

At Apamama:
Killed in action..... 1
Wounded in action..... 2

— 30 —

United States Pacific Fleet and
Pacific Ocean Areas
Communique No. 7

21 August 1942.

A force of Marines of the U. S. Pacific Fleet made a successful landing on Japanese held Makin Island on August 17th. The purpose of the expedition was to destroy the installations of this enemy

Petitioner's Exhibit A—(Continued)

seaplane base. This purpose was accomplished in its entirety and the force has been withdrawn.

Known enemy losses inflicted by the Marines are: at least eighty Japanese killed; radio installation and stores destroyed; one large and one small seaplane destroyed on the water. Other losses were inflicted on the enemy forces by heavy bombing attacks of their own aircraft from other bases, which were attempting to assist them.

The ships of our expedition gunned and sank one small transport and one gunboat.

Considering the nature of this operation, our forces suffered only moderate losses.

The Naval Officer commanding the expedition was Commander John M. Haines, U. S. Navy. The Marines were commanded by Lieutenant Colonel Evans F. Carlson, U. S. Marine Corps Reserve. Second in command of the Marines was Major James Roosevelt, U. S. Marine Corps Reserve. None of these officers was on the casualty list.

/s/ C. W. NIMITZ,
Admiral, U. S. Navy, Commander in Chief, U.S. Pacific Fleet, and Pacific Ocean Areas.

Petitioner's Exhibit A—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique Number 6

August 8, 1942.

Forces of the United States Pacific Fleet and Pacific Ocean Areas, assisted by units of the Southwest Pacific Area, launched offensive operations in the Tulagi area of the Solomon Islands on August 7th, East Longitude date. These operations are progressing favorably in spite of opposition by enemy land based aircraft and garrisons.

On August 8th, East Longitude date, a task force of the Pacific Fleet bombarded enemy ships and installations in Kiska harbor.

/s/ C. W. NIMITZ,
Admiral, U. S. Navy, Commander-in-Chief, U.S. Pacific Fleet and Pacific Ocean Areas.

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Communique Number 5 Was Never Released By the Commander in Chief, Pacific Fleet

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique Number 4.

June 7, 1942.

The enemy appears to be withdrawing. Contact

Petitioner's Exhibit A—(Continued)

was lost during last night. Additional damage was inflicted on two enemy cruisers. Until all reports can be checked, it is impossible to state whether these cruisers are in addition to those reported in Communique #3, or whether they were damaged cruisers included in the previous report. One enemy destroyer was sunk.

One United States destroyer was sunk by a submarine but nearby ships rescued the personnel with small loss of life.

Except for minor submarine activity in the vicinity of the Hawaiian Island Chain, this Section of the Pacific is quiet.

/s/ C. W. NIMITZ
Commander in Chief, U. S. Pacific Fleet, and Pacific Ocean Areas.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 3

6 June 1942

Though the skill and devotion to duty of their armed forces of all branches in the Midway area our citizens can now rejoice that a momentous victory is in the making.

It was on a Sundey just six months ago that the Japanese made their peacetime attack on our fleet

Petitioner's Exhibit A—(Continued)

and army activities on Oahu. At that time they created heavy damage, it is true, but their act aroused the grim determination of our citizenry to avenge such treachery, and it raised, not lowered, the morale of our fighting men.

Pearl Harbor has now been partially avenged. Vengeance will not be complete until Japanese sea power has been reduced to impotence. We have made substantial progress in that direction. Perhaps we will be forgiven if we claim we are about midway to our objective!

The battle is not over. All returns have not yet been received. It is with full confidence, however, that for this phase of the action the following enemy losses are claimed; two or three carriers, and all their aircraft, destroyed; in addition one or two carriers badly damaged and most of their aircraft lost; three battleships damaged, at least one badly; four cruisers damaged, two heavily; three transports damaged. It is possible that some of these wounded ships will not be able to reach their bases.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 3 (Continued)

One of our carriers was hit and some planes were lost. Our personnel casualties were light.

This is the balance sheet that the Army, Navy

Petitioner's Exhibit A—(Continued)

and Marine forces in this area offer their country this morning.

C. W. NIMITZ,
Commander-in-Chief, U.S. Pacific Fleet and Pacific Ocean Areas.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 2

June 5, 1942

The Japanese have not followed up their initial air attack on Midway except by a few ineffectual shots from a submarine last night. As more reports come in it appears that the enemy's damage is very heavy indeed, involving several ships in each of the carrier, battleship, cruiser and transport classes. This damage is far out of proportion to that which we have received.

The brunt of the defense to date has fallen upon our aviation personnel in which the Army, Navy and Marine Corps are all represented. They have added another shining page to their record of achievements.

One carrier already damaged by air attack was hit by three torpedoes fired by a submarine.

On every occasion when we have met the enemy our officers and men have been superlative in their

Petitioner's Exhibit A—(Continued)

offensive spirit and complete lack of fear. Our country can feel secure with such personnel such as this.

There were reported several instances of the enemy planes machine gunning our aviation personnel who had bailed out in parachutes or were adrift in rubber boats.

While too early to claim a major Japanese disaster it may be conservatively stated that the United States' control remains firm in the Midway area.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 2. (Continued)

The enemy appears to be withdrawing but we are continuing the battle.

C. W. NIMITZ,
Commander - in - Chief, U. S. Pacific Fleet and Pacific Ocean Areas.

—

4 June, 1942.

U. S. Pacific Fleet Communique No. 1.

At 6:35 a.m., Today Midway time, that island was heavily raided by Japanese carrier based planes. The attack was repulsed by the local defenders in which all the armed services are represented. A heavy toll of the attacking planes was taken. Damage to material installations at Midway was reported

Petitioner's Exhibit A—(Continued)

as minor. No report of personnel casualties has been received.

The Japanese carriers were accompanied by battleships, cruisers, and destroyers. One battleship and one carrier have been definitely damaged and other vessels are believed to have been hit. Our attacks on the enemy are continuing.

C. W. NIMITZ,
Commander-in-Chief, U. S. Pacific Fleet, and Commander-in-Chief, Pacific Ocean Area.

[Endorsed]: Filed April 5, 1944.

Mr. Anthony: At this time, I'd like to offer in evidence a statement appearing in Volume 65, No. 3346, Army and Navy Register, dated January 22, 1944, containing a quotation from Admiral Halsey.

Mr. Ennis: Counsel, are you just offering Admiral Halsey's quotation or the comments in connection with it?

Mr. Anthony: I am offering the entire statement.

Mr. Ennis: May I have a moment to examine this, your Honor? (Mr. Anthony shows Mr. Ennis a copy of a magazine.)

Mr. Anthony: I might state for your Honor's information that it is my understanding that the Army and Navy Journal and the Army and Navy

Register are in the nature of professional magazines [402] which are recognized by the Military and Naval forces of the United States.

Mr. Ennis: No objection.

Mr. Anthony: I have here a photostatic copy of the article itself, and in it is indicated the portion which I am offering. (Handing a photostat to the Court.)

The Court: Received in evidence as Exhibit "B".

(Petitioner's Exhibit "B" was received in evidence.)

PETITIONER'S EXHIBIT "B"

Library of Hawaii

ARMY AND NAVY REGISTER

ADMIRAL HALSEY'S VIEWS

Admiral Wm. F. Halsey, jr., home on leave from the South Pacific, at the home of his daughter, Mrs. Preston L. Spruance, in Delaware, stated his opinion that the way to win the war was beat Hitler and then get the "stuff" out to the Pacific so we can polish off the Japs. He is quoted as saying:

"While the Japs seem to have enough equipment, the Jap air force has definitely deteriorated—some of their flyers are mere kids, lacking air training and air experience. We have captured some of their 18-year-old pilots. We outclass the Japs in planes and personnel.

"Air power alone is not enough. It takes a fighting man on the ground to help win the fight. You

can't win with ships and planes alone nor with ground troops alone. It's the combination.

"Island hopping is not the best way to win, of which all fighting men are convinced. In a small way we have gone around some of the islands. This has worked out well."

As to unified command, Admiral Halsey said, "Everybody has an area for which he is responsible. My directions come from Gen. MacArthur, and our relations are most cordial. I see him about once every two months, and I never received finer treatment from any man."

With regard to "where is the Jap fleet?" the admiral said that, while units of it "are all over the Pacific," it is concentrated to a certain extent at Truk in the Carolinas and off the mainland of Japan, and added:

"If it came to a show-down fight between their fleet and ours, the American fleet would be afloat and theirs at the bottom of the sea, where all Jap ships should be.

"When you begin to lick a Jap and lick him properly, he may then begin to doubt he is the son of the Sun God. When he is well fed and well uniformed he is tough, like any other rat. But when they are hungry and can't get food they are easy to beat—like other rats."

[Endorsed]: Filed 4-6-44.

Mr. Anthony: And from the same publication, the same issue, if the Court please, I would like to offer a speech of General Arnold before the Poor Richard Club of Philadelphia, on January 17, 1943. (Showing Mr. Ennis a photostat.) The General says in part, if the Court please: (Reading)

> "The aerial spearheads that we have driven into the periphery of the Japanese empire form an air front that has enabled us to get definite superiority over the enemy. These spearheads no longer knock at the extreme outside, but are reaching farther and farther within the circle and now threaten important Jap strongholds like Rabaul, Truk, and Kavieng."

Mr. Ennis: No objection.

(Mr. Anthony hands a photostat to the Court.)

The Court: Received Exhibit "C"

(Petitioner's Exhibit "C" was received in evidence.)

PETITIONER'S EXHIBIT "C"

Library of Hawaii

ARMY AND NAVY REGISTER

FIGHTING THE JAPS

Gen. Henry H. Arnold, Commanding General, Army Air Forces, on January 17 received from the Poor Richard Club of Philadelphia the Gold Medal of Achievement for 1943, awarded annually by the club. The presentation was made at the Bellevue-

Stratford Hotel in Philadelphia during the club's thirty-ninth annual dinner.

In accepting the honor, Gen. Arnold, among other things, said:

"We are fighting, and fighting hard, in theaters other than Europe—for instance, in the Pacific and Asia against the Japs. These operations against the Japanese have not been secondary. The problems, however, are most difficult and have been entirely different. The Europan phase of the conflict is approaching its crisis sooner, and geographical conditions made it possible to close grips with that enemy first.

"In the islands of the Pacific there were no adequate airfields waiting for us such as we were able to use in Great Britain. All military activity in the Pacific must be directed toward securing air strips. This transoceanic war has been a slow, tedious, and difficult job, and, while much has been accomplished, we still have a long way to go. The aerial spearheads that we have driven into the periphery of the Japanese empire form an air front that has enabled us to get definite superiority over the enemy. These spearheads no longer knock at the extreme outside, but are reaching farther and farther within the cricle and now threaten important Jap strongholds like Rabaul, Truk, and Kavieng.

"The Jap reaction to our penetration has been highly erratic. They have made strong bids to break our supremacy of the skies followed by periods of complete inaction. Jap aircraft have attacked our air bases again and again, disregarding huge losses,

and then, changing their policies 100 per cent, have refused battle. They do not seem to have any strategic plan for defense, but rather counterattack haphazardly as if they sensed that nothing they do can stop the increasing penetration of our aircraft, and—I'll let you in on a secret—nothing can.

"Jap propaganda reflects a similar type of erratic wavering. One day an admiral will say: 'The people on the home front must not become intoxicated with war victories.' The following day their radio will state: 'The war situation manifests a grave and serious aspect.'

"There is good reason for such indecision and worry. Our air strips are constantly drawing the noose tighter around the Japanese empire.

"As with Germany, this job will not be easy. It will be no pushover. Far from it. Because of the distances, the climate, the geography, and the topography, much effort, long, hard hours of labor, intense suffering, heroic bravery, and great ingenuity will be demanded of our men. But we will be equal to the task, no matter how long it takes nor how difficult it is to accomplish."

[Endorsed]: Filed 4-6-44.

Mr. Anthony: And from page 13 of the same periodical I offer an amended statement that appears in relation to Americans of Japanese descent.

The Court: Just a moment, now; you have gone a little too far. [403]

Mr. Anthony: May I have that and I can indicate that? It is not indicated on there.

The Court: Well, this Exhibit "B" from the "Register", containing Halsey's views, which part of that did you offer? Is it the entire article of Admiral Halsey's views, is that what you want?

Mr. Anthony: That is correct.

The Court: Instead of just dumping a lot of documentary stuff into the Court's hands, I wish you'd explain as you go along what it is that you are offering to put into the record and for the Court.

Mr. Anthony: Very well, your Honor, I shall do so. Exhibit "B" has been received in evidence, if the Court please, as a statement appearing in the Army and Navy Register which contains a direct quotation from Admiral Halsey in regard to the progress of the Pacific war, in which statement the Admiral answers the question, where is the Jap fleet? The quotation from the Admiral himself I shall not read, but it will be in evidence here; it indicates very clearly that the Admiral's opinion is that if the Jap fleet should come out our fleet is ready for them; and, as the Admiral says, "Ours would be afloat and their at the bottom of the sea."

The Court: Halsey says that?

Mr. Anthony: Those are Halsey's views, your Honor. I would like to offer in evidence a statement appearing in the same "Register, on page 13, with reference to Americans of Japanese descent. [404] The purpose of this——

The Court: By whom?

Mr. Anthony: This is a quotation from the action of the War Department in regard to admitting Japanese into the Selective Service System. I might state for the Court's information that shortly after the outbreak of war Japanese were not permitted to participate in the Selective Service System. Thereafter, by reason of the extraordinary services rendered by persons of that race, notably in the Italian campaign, the War Department has changed its view and Japanese are now available for induction in the regular way like any other American citizen. This is a statement which reports the action of the War Department in making that change. And it says: (Reading)

> "The excellent showing which the combat team has made in training and the outstanding record achieved by the 100th Battalion (a former Hawaiian National Guard unit) now fighting in Italy were major factors in the adoption of the present plan."

The purpose of this evidence, if the Court please, is that it addresses itself to that part of the petition which I gather by innuendo the Respondent——

The Court: You mean answer to the petition.

Mr. Anthony: The answer—that part of the answer which by innuendo endeavors to cast some reflection upon the Japanese of this Territory. I want to produce before this Court what the official statements of the War Department and the highest Governmental authorities in the United States are in that regard. This is part of the evidence on that issue. [405]

Mr. Ennis: If the Court please, if we are going to have a general discussion of the evidence as it is put in, I would like to just comment on the record that it is not the purpose of the answer or return to cast any reflection on any part of this population, but it is true that there is an internment program for persons believed to be dangerous by the military commanders. And I think upon examination it would appear that that paragraph to the return and answer refers to the military necessities of that program.

The Court: That second photostat offered, from the Army and Navy Register is received in evidence as Exhibit "D". The date of that is the same as the other, January 22nd?

Mr. Anthony: The same date, your Honor.

(Exhibit "D" of the Petitioner was received in evidence.)

PETITIONER'S EXHIBIT "D"

ARMY AND NAVY REGISTER

AMERICANS OF JAPANESE DESCENT

Plans have been completed for the reinstitution of general selective service procedures for American citizens of Japanese descent.

Under the War Department plan, Japanese-Americans considered acceptable for military service will be reclassified by their Selective Service Boards on the same basis as other citizens and called for induction if physically qualified and not deferred.

Last February the 442d Combat Team, composed of Japanese-American volunteers, was formed. In a letter to the Secretary of War commenting on the formation of this unit, the President said:

"No loyal citizen of the United States should be denied the right to exercise the responsibilities of his citizenship regardless of his ancestry. The principle on which this country was founded and by which it has always been governed is that Americanism is a matter of the mind and heart; Americanism is not, and never was, a matter of race or ancestry."

The excellent showing which the combat team has made in training and the outstanding record achieved by the 100th Battalion (a former Hawaiian National Guard unit) now fighting in Italy were major factors in the adoption of the present plan.

[Endorsed]: Filed 4-6-44.

Mr. Anthony: I now offer, if your Honor please, an article by Lt. General Robert C. Richardson, which appears in the Army and Navy Journal of the issue dated December, 1943. This is an article prepared by General Richardson. It deals with the civil population of Hawaii. The title of the article is "Hawaii—Fortress of the Pacific." And in regard to the Japanese of this community the General has an expressed statement: (Reading)

"The dangerous and potentially dangerous aliens and citizens have been arrested and in-

terned by the Army and the remainder have proved on innumerable occasions that they are loyal to America. Unquestionably, the Japanese here entered the war under a cloud of suspicion from other races and have had to demonstrate their loyalty. They have done it by refraining from any acts that might cast suspicion on them or on their community." [406]

There are many other statements by the General which are of importance and significant, if the Court pleace.

The Court: Received as Exhibit "E".

(Petitioner's Exhibit "E" was received in evidence.)

PETITIONER'S EXHIBIT E

HAWAII—FORTRESS OF THE PACIFIC

by

Lieutenant General Robert C. Richardson, Jr.
Commanding General, Army Forces,
Central Pacific Area

The unique position of Hawaii in the Pacific War was well described by Robert P. Patterson, Undersecretary of War, on his visit to this theater a few months ago. "Hawaii," said Mr. Patterson, "is the seaward bastion to the western approaches to our mainland . . . Hawaii's first line is far at sea, held by the continuous patrols of air and water lanes which guard these islands against surprise. The defenses of the islands themselves, strongly manned

by garrisons in a high state of training, are heartening evidence of how much has been done here in twenty months of war . . .

"But until peace comes again it is the defenses of Hawaii which must have our first attention. Then . . . it will be a peace unthreatened by sudden death from the skies. Till that menace is wiped clean from the western world, Hawaii will remain a battery of tremendous and overwhelming firepower, aimed at the heart of Japanese aggression."

America's fighting men and civilians in this area have a special interest in the victory over our Axis enemies, for it was here on December 7, 1941, that the Japanese struck the foul blow that plunged the United States into the war.

Since that day of Japanese infamy, Pearl Harbor has recovered to become an even greater, more active base of operations than before. And the Army has increased the fighting strength of these Islands many times. Many of the blows against the Japs already have come from Hawaii. The Battle of Midway was new and eloquent proof to the whole world —and especially to America's enemies—of the power that is concentrated in this part of the Pacific.

The internal situation in Hawaii is complex, but it has been utilized effectively and efficiently to contribute to the war effort to the fullest extent. Unique features of Hawaii's wartime operations include: a population of diverse races, one-third of whom are of Japanese blood, but most of whom are of American nationality; two large industries, sugar and pineap-

ples, which, like the rest of the economic structure here, have not been disrupted by wartime operations, but are contributing to them in many concrete ways; the innovation of martial law for the attainment of a maximum amount of security for this vital theater; the existence of the first American volunteer civilian defense groups to work under an attack on U. S. soil.

The dangerous and potentially dangerous aliens and citizens have been arrested and interned by the Army and the remainder have proved on innumerable occasions that they are loyal to America. Unquestionably, the Japanese here entered the war under a cloud of suspicion from other races and have had to demonstrate their loyalty. They have done

(Photograph)

Lieutenant General Richardson addressing U. S. Army troops at an advance base. This photo was taken just prior to his assumption of command at Hawaii.

it by refraining from any acts that might cast suspicion on them or on their community. They are doing it in still other ways. Two examples come to mind. One is the response their young men showed when nearly 10,000 volunteered in these Islands for enlistment in a combat team of the Army which is now training on the mainland. They surpassed the Army quota. Only recently, the United States Treasury Department presented a citation addressed to

"Citizens of Japanese Ancestry, Honolulu, Hawaii," in recognition of their direct donation of $10,340 for "Bonds for Tokyo." Their purchase of war bonds and their contributions to Army and Navy relief societies and the Red Cross are also high.

Martial law was established in Hawaii December 7, a matter of hours after the Japanese attack. Governor Joseph B. Poindexter placed the territory under martial law and suspended the writ of habeas corpus, leaving the conduct of governmental affairs in the hands of military authorities.

The civil governor's action was approved immediately by President Roosevelt. A sudden readjustment of civilian life was the result. Because of the danger of additional enemy air attacks, a nightly blackout was imposed. For additional safeguards of civilian communities and military installations, the military jolice joined forces with the civilian police and took over the territory's major police duties.

The office of the Military Governor was established at historic Iolani Palace, seat of the territorial government, to supervise all civilian affairs, and an executive was designated by the Commanding General. General orders issued by the Office of the Military Governor became the "law of the land."

Before wartime Washington was completely geared to handle civilian affairs in the crisis, the Office of the Military Governor had installed its own warfront system of price and food control, had rationed gasoline and tires, adopted wartime labor

policies, and regulated the importing and distribution of critical materials and supplies.

Aside from security, the primary task of the Military Governor was the maintenance and upbuilding of a steady stream of supplies to Hawaii. These tasks were met by the establishment and staffing of the food control, materials and supplies control, labor control, cargo and passenger control, and the planning and priorities sections of the Military Governor's office.

Hawaii's military government was something new in American governmental processes, but it is noteworthy that during absolute military control of the civilian community a majority of those administering the affairs of the Military Governor'c office were civilians. Section heads and administrators were, for the most part, Army officers, many being civilians who had held reserve officer status and who were called to duty immediately.

With the declaration of martial law the civilian courts were closed. Trial of all offenses were handled by military commissions and provost courts, and legal procedure was geared to wartime tempo. Gradually, the functions of civilian courts were restored and when functions of the military government were relinquished to civilian authorities March 10, 1943, the writ of habeas corpus remained suspended and the military reserved the right to hear cases in which members of the armed forces were involved.

The transfer was made after a conference of military, civilian and cabinet officials in Washington.

Many of the controls were passed back to the civilian government but martial law remained in effect.

Restrictions and regulations designed to safeguard the island's security are many, including rigid control over the movements and privileges of enemy aliens, chlorination of water supplies throughout the territory, and other special health and safety measures.

Generally, all orders and projects of the military governor are accepted with a minimum of complaint by a civilian population which realizes it is living in the war zone.

Of inestimable assistance to the Military Government was a blueprint which a foresighted civilian community had been perfecting painstakingly, since the middle of 1940, a year and a half before the "blitz." The plan, drawn up with the professional aid of the Army and Navy, had provided for many of the varied and seemingly endless contingencies of war.

Before the terrible day and night were over, the diverse but cooperating organizations which executed the numerous measures to aid and protect civilians in the islands had become the nucleus of Hawaii's first office of Civilian Defense.

Outstanding among the civilian components which had prepared themselves and their communities for a disaster, were the volunteer police, chosen from outstanding young men of the community, the medical and hospital evacuation committee and the Honolulu Mayor Major Disaster Council, whose origins

dated back a year and a half. Innumerable committees of the disaster council worked feverishly and effectively during that dangerous and trying time; including groups of engineering, burial, transportations, communications; light, power and fuel; personnel, public information, water supply, streets and highways and mortuaries.

Since the Territorial OCD has absorbed many of the original personnel, volunteer and full-time, who first made up those pre-war committees which were to function so admirably when the enemy struck. Today, the OCD's many functions are so necessary and so familiar that the territory looks upon this island-wide organization as an indispensable agency, whose main purpose of "relieving the military for combat and providing protection for civilians by civilians" is an unquestioned necessity. On all the islands for OCD now has some 27,000 volunteer workers.

Among OCD activities and achievements are these: the first complete registration and fingerprinting of an entire civilian community in the United States, involving several hundred thousand people; construction of many splinter shelters; bombproofing of utilities; construction, manning and operation of special hospitals and evacuation centers; cooperation, financially and in other ways with existing hospitals; supervision of civilian nursing activities; erection and operation of gas decontamination centers; supply and coordination of the distribution of army gas masks, assumption, with the relaxation of martial law of many civilian transportation, supply

and food activities, formerly operated by the OMG; aid in the Americanization program, etc. The public schools' contributions to this whole program, in the use of volunteer teacher and administrative personnel and in many training aids, as well as the financial and personnel contributions made by business groups, church, professional, Red Cross and other organizations and individuals, have helped make the enormous program a success.

Another form of volunteer endeavor which is noteworthy for its success and the wholehearted and patriotic attitude of its participants is the organized Defense Volunteers, of whom there are thousands on each island. These groups, with army uniforms and equipment but with their own insignia and rank, stand ready at a moment's notice to be absorbed into the Hawaiian Department in the event of invasion or other war emergency.

It is the co-operation, thought and plain hard work, freely given by both civilians and military personnel, that makes Hawaii the great fortress it is today. It is proud to be so located that it is an integral part of our mainland defense, and it is alert and ready to fulfill any obligations that its strategic position may bring it.

[Endorsed]: Filed 4-6-44.

Mr. Anthony: I now offer in evidence, if your Honor please, an article appearing in the Army and Navy Journal, dated December 15, 1944, Volume 81, on page 575, containing an article by Admiral Halsey, or rather an article with reference to Admiral Halsey, containing a quoted interview with him, and also to the Secretary of the Navy, with reference to where the Japanese fleet is and the readiness of our fleet to meet them. (Showing Court a photostat)

The Court: Received as Exhibit "F".

PETITIONER'S EXHIBIT F

Ready for Jap Fleet

Admiral William F. Halsey, commander in chief in the South Pacific area, this week expressed his conviction that even in the event of a concentration of Japanese sea power for the purpose of one supreme counter-blow the Pacific fleet is able to cope with the situation. When asked the question at 11 Jan. press conference of the Secretary of the Navy, Admiral Halsey, who is in this country for about ten days, replied: "Decidedly, yes," adding that in the event of such a concentration the enemy could put up a stiff fight. He does, however, consider the Japanese fleet to have been seriously crippled by American forces.

Asked if he considered the enemy base at Truk to be a point which must of necessity be taken, he replied: "I can tell you the only definite place that has got to be taken, and that is Tokyo, and don't let 'em stop until they get there."

He added a warning to the American people against the acceptance of peace offers before this final goal is reached.

Japanese planes, said Admiral Halsey, are as good and possibly better than they ever were but the enemy's pilot material is distinctly on the down grade, many pilots in enlisted grades now being noted in place of the officer pilots employed formerly.

In speaking of the replacement of enemy losses, he stated: "They are carrying on a building program which we hope and believe is not doing too well. I think they have lost a tremendous number of cruisers."

Telling of the crippling of the Japanese supply lines by our air, surface and submarine force, he said: "They go into a place first with shipping, and when they get severely hit they go in with barges. We got some of these with troops on and made good Japs of them. They next use submarines, and then as a last resort they let them starve."

Telling of the work accomplished by the Seabees, he said: "It just beggars description. Munda airport is today as fine an airport as any you have in the United States."

Urged by Mr. Knox to tell of the part which officers of the Naval Reserve have played in this area, he answered: "We don't think of Regulars and Reserves, they are all Naval officers and are all doing a splendid job. I don't believe that this great country has ever before produced as fine fighting men as we have today."

[Endorsed]: Filed 4-6-44.

Mr. Anthony: I'd now like to offer in evidence an article appearing in the Army and Navy Register, dated March 4, 1944, Volume 65, No. 3352, which is an article by Major General Willis H. Hale, U.S.A. Commanding General, U. S. Army 7th Air Force. This article, if the Court please, contains an elaborate discussion of the progress of the war in this area. The General states in this article that the key to the Central Pacific areas is the Marshall Islands. He also states a fact which will be of interest to this Court: (Reading)

> "After December 7, 1941, the imminent threat of invasion of the Hawaiian Islands was not lifted until the battle of Midway. Then we required bases from which to operate. These were gradually built up 2,000 to 2,400 miles from Oahu in the Phoenix and nearby islands and later in the Ellice group." [407]

The article, if the Court please, has detailed professional information in regard to the campaign in this area.

The Court: Received as Exhibit "G".

(Petitioner's Exhibit "G" was received in evidence.)

PETITIONER'S EXHIBIT G

ARMY AND NAVY REGISTER

Washington, D. C., March 4, 1944

Marshall Islands Campaign

Maj. Gen. Willis H. Hale, U. S. A., Commanding General, U. S. Army 7th Air Force, at a press con-

Petitioner's Exhibit G—(Continued)

ference on March 1 stated that capture of important Marshall Islands has won from the Japanese the key to the entire central Pacific and advanced by several weeks the time table of our march to Tokyo.

It is just a little over three months since the 7th Air Force aggressively took the air offensive in the central Pacific to prepare for future combined operations with sea and ground forces. Prior to that time the 7th was engaged in defense of the Hawaiian Islands from the very serious threat of invasion, in preparing bases from which to operate, in building up its striking strength and in training crews for operations in what we, the vast ocean, and the weather have made the most experienced Japanese pilots believe is the most difficult theater of war in which to maintain sustained air combat.

After December 7, 1941, the imminent threat of invasion of the Hawaiian Islands was not lifted until the Battle of Midway. Then we required bases from which to operate. These were gradually built up 2,000 to 2,400 miles from Oahu in the Phoenix and nearby islands and later in the Ellice group.

These distances are important. Any understanding of the war in the Pacific must be based on an appreciation of distance. Many people in the United States have virtually no conception either of its watery vastness or of air fighting conditions in the central Pacific. The mission of the 7th Air Force, present and future, involves land-based air operations in a theater which extends over some 16,000,000 square miles, or more than five times the size of the

Petitioner's Exhibit G—(Continued)

United States. The climate is wonderful in much of this weather, but the weather is awful. It is rapidly changing and treacherous, and dependable forecasts are rarely available to the air crews of the 7th Air Force. In operations against the Marshalls, for example, 7th Air Force flyers were faced with a "moving front" which sometimes reached an altitude too high to fly over and which often forced the pilots to fly, in a driving storm, a few feet above the water."

Having occupied the Marshals for more than 20 years, the Japs were fully cognizant of these conditions. This was possibly a major reason why they have not poured so many replacement planes into this area as they have done, despite their continuing heavy losses, into the New Britain-New Guinea sector. There was no use sending very large numbers into the central Pacific, where often their pilots couldn't fly them.

Although we had previously attacked Japanese installations there, the 7th Air Force began its intensive and systematic bombing in the Gilbert campaign on November 13. Our principal targets were Tarawa, Makin, and Abemama, in addition to several supporting bases in the Marshalls.

That campaign is no longer news. There is, however, one comparison between the Gilbert campaign and the Marshalls campaign which is of note: The 7th Air Force bombed the Marshalls for 70 days prior to the landing, while the Gilberts were systematically bombed for only one week.

Petitioner's Exhibit G—(Continued)

Japanese Homeland to Be Bombed

One of the objectives of the air war in the Pacific is to secure a chain of bases which will put the Japanese homeland within effective range of our heavy bombers. The Marshalls operation was a long step in carrying out that plan.

The mission of the 7th Air Force in the preparation for and during the actual invasion of the Marshalls was to deny to the Japs the use of their air power and thereby remove the awful hazard faced by any invasion fleet that a determined attack by land-based enemy aircraft may seriously cripple major fleet units. So successful was the 7th in the performance of this mission that the extensive naval forces participating in the assault and occupations of Kwajalein and Majuro—the largest ever assembled in the Pacific—were not at any time—before, during or after—attacked by as much as a single hostile aircraft.

On one island where the Japanese brought in replacement planes, the 7th bombed out the radar station. It was therefore possible for carrier-based planes to attack that island with complete surprise and to knock out in one blow the entire Japanese force of some 60 airplanes.

The question has been asked, Would it have been possible to make another Pantelleria out of the Marshalls operation? It was not sufficient to render useless the Marshall Islands to the Japanese, as they were needed by our air forces for air bases. The 7th Air Force was, however, well on its way to ac-

Petitioner's Exhibit G—(Continued)

complish the neutralization of the five principal Jap bases in the Marshalls as early as two weeks before the occupation. (By neutralization is meant denying the enemy the intended use of a base.) At that time two of the important islands were 80 per cent neutralized, one was 60 per cent, one 50 per cent, and one 20 per cent. By the time of the assault the "neutralization" had proceeded much further, but it can never be complete unless the enemy abandons the air base, a practice for which the Japs are not particularly noteworthy. However, due to attacks from the air, the Marshalls had ceased to exist as a formidable bastion in the Jap outer perimeter of defense.

The 7th Air Force, by its day and night bombing of all major Japanese installations in the Marshalls —with Liberators, Mitchells, Dauntless, P-40 Warhawks, everything we had with wings on it which could carry a bomb—to a large degree helped to render impotent the extensive ground defense installations which the Japs had developed on several of the islands and on which they had confidently counted successfully to defend those islands.

Due in part to the impartiality of our bombings, the Japs didn't know where to expect the Marshalls assault. Reports from our aircraft showed that they were redisposing their forces prior to the time of the invasion and in anticipation of it; but they were out-smarted.

In addition to its operation in preparation for the Marshalls occupation, the 7th also supported the

Petitioner's Exhibit G—(Continued)

assault by successfully dropping 2,000-pound "atoll busters" on Jap gun emplacements defending Kwajalein and by unremitting attacks on other Jap islands which rendered them useless as supporting bases in the defense of Kwajalein and Majuro.

In the Marshalls operation the 7th Air Force destroyed or probably destroyed some 21 enemy naval or cargo vessels and damaged, in many cases seriously, at least 29 more.

In the Marshalls campaign from 80 per cent to 92 per cent, depending on the type of plane involved, of all bombs dropped by the 7th Air Force hit the target at which they were aimed. This record is as great a tribute to the excellence of the Norden bomb sight as it is to the skill of the 7th Air Force air crews. We use the Norden bomb sight exclusively in our heavy bombers.

The adaptation of the 75-mm. cannon in the Mitchell bomber to the requirements of the central Pacific theater was an interesting aspect of the Marshalls campaign. Used experimentally elsewhere, this was the first time it played an important role in a specific operation. This cannon proved to be a highly formidable weapon with a surprising degree of accuracy. It was used with good results against shipping, but particularly the "flying cannon" served to neutralize Jap ack-ack and automatic weapons fire which had taken a heavy toll of our Mitchell bombers in their minimum-altitude attacks against Jap island installations.

Petitioner's Exhibit G—(Continued)

The Mitchells, flashing in just skimming the water at more than 250 miles an hour, presented a point-blank target. But with the "flying cannon" the Mitchells were able to drive the Jap gun crews from their weapons and in many cases to destroy the weapons themselves. In the approach to the target one plane could get off as many as 10 shells. With such fire power even a small formation of Mitchells could lay down a considerable artillery barrage. The Japs could not stand up to it. This use of this cannon in the Mitchell does not in any way impair the bomb load, the speed, or the range of the aircraft.

As a medium and heavy bomber team the Mitchell-Liberator combination is proving itself beyond our greatest expectations practically every day in the Pacific. The planes fly, shot up, through weather so turbulent it threatens to pull them apart. Almost never do they have fighter protection; the distances are too great. Frequently they must fight their way into and out from a target. Sometimes they get blasted full of holes; sometimes they get motors shot out, but just about always, if the wings stay on, they get home. The men and women who are building those airplanes deserve great credit.

The Marshall campaign provided the Japs with a handwriting on the wall—or a handwriting in the sky—which must be legible to all of them. The pattern for the future—at least so far as the Air Force is concerned—will be to render ineffectual every island group which stands between us and the Japanese homeland. The 7th Air Force is already blast-

Petitioner's Exhibit G—(Continued)

ing at the Carolines. Anyone who wants to know where it is going from there need only look at the map.

These operations are largely concerned with securing air bases, but they are in no sense "island hopping," a term which has been used largely to indicate a tortuously slow approach to Japan. Through combined operations with the Navy and the marines, we are advancing by leaps and bounds. The 7th Air Force commenced its bombing of the Gilberts on November 13 from bases roughly 4000 miles from Tokyo. About 85 days later we were set in the Marshalls, and our bases there are about 2,500 miles from Tokyo. Thus was gained 1,500 miles, an average of more than 17 miles a day.

Those Who Fight

Before summarizing the Marshalls campaign a few further remarks about the 7th Air Force and the men in the Air Forces seem appropriate. The men who fight the air war over the Pacific carry on as though a battle as is being waged anywhere in the world. They don't live in comfortable buildings; they sleep on canvas cots in tents and under mosquito netting. Their showers are gasoline drums with a nozzle, and they wash and brush their teeth and shave in tin hats. They are 2,400 miles from the nearest American community, the nearest dance, the nearest normal social life. If they are shot down or disabled over the target they face what to them is the stark horror of capture. If they go down in

Petitioner's Exhibit G—(Continued)

the ocean their chances of rescue, despite the vigilant Navy rescue service, are problematical. Yet they must fly constantly. During January every bomber in the 7th Air Force forward echelon averaged six missions. Considering the distance traveled; that is, in my opinion, more flying per airplane than in any other theater in the war.

Because of conditions, the 7th Air Force has had to become a versatile air force. Bombers are used occasionally as fighters, and fighters are regularly used as bombers.

The fastest P-39 in the Pacific is a night fighter built by 7th Air Force engineers from a reclaimed fuselage and spare parts. Heavy bombers of the 7th Air Force constantly have to land and take off from strips which any rule book will say are impossibly short for a B-24.

The 7th developed its convoy system for ferrying fighters over long distances in which the fighters fly formation on a B-24, which does the navigating, a hazardous but necessary undertaking because of weather. The 7th has developed its own transition training schools, as every crew member must have a postgraduate course before he is qualified to fly in the central Pacific.

The 7th Air Force is operating bombing missions longer than those in any other theater. The longest was 2,769 miles, and the average is more than four times the distance from London to Berlin. All flights cover great water distances with no intermediate

Petitioner's Exhibit G—(Continued)

landings. The usual checkpoints, such as rivers, mountains, and railroads, are nonexistent.

The navigation must be perfect. Targets are pin points on islands which themselves may be smaller than the factory area of some prime targets in Germany. Is isn't enough that they hit the island; they must hit the target. Seventh Air Force bombardiers must be able to get hits from an altitude of 12,000 feet, an average of less than 250 feet from the center of the aiming point. This is doubtless the most consistently accurate bombing being done anywhere in the world.

In a mission over Rongelap Liberator bombers were assigned the job of knocking out a radio station in a building only 35 feet by 125 feet. The ships went in at 3,500 feet, made a perfect run and dropped their bombs squarely in the middle of the building. They used 100-pound bombs, relying on accuracy not on tremendous concussion.

Salient Features of the Campaign

1. In losing the Marshalls the Japs received a great strategic setback. Tarawa was the key to the Marshalls, but the Marshalls provided the key to the entire central Pacific.

2. In the Marshalls was proved a perfected model of combined operations so successful that we have been enabled materially to put ahead our Pacific time table.

3. The basic reason for the excellent success in the use of land-based aircraft in this combined opera-

Petitioner's Exhibit G—(Continued)

tion is the fact that the 7th Air Force was utilized, as airpower always should be, as a complete unit with an assigned mission. One of the important lessons of the Marshalls campaign is the proved facility with which the land-based aircraft of an Army air force can support and cooperate with the Navy and amphibious forces, in combined operations.

4. The value of strategic bombing in the central Pacific was demonstrated in the Marshalls. In the march across the Pacific land-based airpower will have the dual function proved in the Marshalls of neutralizing the enemy air forces and preparing Jap-held islands so that they can be more successfully attacked by Navy surface vessels and carrier-borne aircraft and stormed by infantry at a minimum of casualties.

5. While the Marshalls compaign, under the brilliant and meticulous leadership of Admiral Nimitz, conclusively demonstrated that properly employed heavy land-based aircraft are a vital factor in operations ahead, this campaign also revealed outstanding evidence of the unexcelled training and equipment of our Army Ground forces in amphibious assault operations, along with our incomparable marines. These, coupled with the unveiling of the devastating power of the guns of our expanded Navy, constitute the first really terrifying threat Japan has ever known

[Endorsed]: Filed 4-6-44.

Mr. Anthony: Mr. Marshall, will you ask the Clerk of the Supreme Court to step inside, please?

GUSTAF K. SPROAT,

a witness in behalf of the Petitioner, being duly sworn, testified as follows:

Direct Examination

By Mr. Anthony:

Q. Your name, please?

A. Gus K. Sproat.

Q. Sorry I kept you waiting.

A. Yes, sir.

Q. You are the Clerk of the Supreme Court of the Territory? A. Yes, I am.

Q. How long have you held that position?

A. Since January 26, 1931.

Q. At my request, have you examined the records of your office and prepared——

A. Yes.

Q. ——a statement relative to the number of cases in that Court and other Courts?

A. Yes.

Q. Do you have that information with you?

[408]

A. I have those figures with me.

Q. May I see them, please? (Witness hands Mr. Anthony several sheets of paper.) Do you have copies of these?

A. I have office copies, but you may copy these.

(Testimony of Gustaf K. Sproat.)

Q. These sheets that you have prepared, what do they consist of, Mr. Sproat?

A. They consist of the number of cases coming before the Circuit and Supreme Courts of the Territory for the last five-year period, beginning in 1939 and ending December 31, 1943.

Q. There are how many Circuit Courts? There were five?

A. There were five; there are four now.

Q. There is a Court of Record on each of the outside islands? A. Yes.

Q. That's where this Court sits, that is the First Circuit? A. Yes.

Q. Do you have the record of the civil and criminal cases in the Circuit Courts as well as the Supreme Court of the Territory?

A. Yes, I have.

Mr. Anthony: We offer this in evidence, if your Honor please.

The Court: Let's see what it shows.

Mr. Anthony: It shows, your Honor, that the Courts have been open, doing their business.

The Court: Well, outside of that discussion, what actually does it show there? [409]

Q. How many cases were in the Supreme Court during that period, in the year 1939, Mr. Sproat?

A. A total of 35 cases. That includes civil and criminal.

Q. And how about the rest of the years?

A. Forty-one for 1940; ten for 1941; twenty for 1942; twenty-for 1943. That takes in a total of 130 over the five-year period.

(Testimony of Gustaf K. Sproat.)

Q. Now in the Circuit Courts, how many cases have you had?

A. We have had civil matters, 11,135 cases; probate, 9,371; criminal, 2,669; juvenile and bastardy, 5,533; making a grand total of all courts of 28,838 cases.

Q. You have that broken down by years?

A. I have those broken down by years.

Mr. Anthony: We offer this in evidence, your Honor please.

The Court: Received in evidence as Exhibit "H".

(Petitioner's Exhibit "H" was received in evidence.)

PETITIONER'S EXHIBIT "H"

SUPREME COURT

	1939	1940	1941	1942	1943	1939 to 1943
Civil	31	35	9	13	20	108
Criminal	4	6	1	7	4	22
Total	35	41	10	20	24	130

CIRCUIT COURTS

Civil, other than probate	2097	2119	2095	2243	2581	1135
Probate	1751	1946	2445	2172	1057	9371
Criminal	789	666	501	156	557	2669
			[In pencil]: 4		22	2691
Juvenile & Bastardy	970	1203	1241	945	1175	5533
Total	5607	5933	6282	5516	5370	28708
Grand Total	5642	5974	6292	5536	5394	28838

(Testimony of Gustaf K. Sproat.) Petitioner's Exhibit "H"—(Continued)

	FIRST CIRCUIT					SECOND CIRCUIT					THIRD CIRCUIT					FOURTH CIRCUIT				
	1939	1940	1941	1942	1943	1939	1940	1941	1942	1943	1939	1940	1941	1942	1943	1939	1940	1941	1942	1943
Law	286	444	333	129	137	21	12	31	7	6			2	1	17	34	41	28	33	
Equity	511	272	86	45	46	2	6	8	5	3	3				10	9	10	12	4	
Probate	1251	1493	1918	1617	418	253	237	218	222	269	40	37	20	26	295	169	151	211	287	
Divorce	911	1056	1297	1763	1945	110	85	102	98	97	19	15	22	29	117	72	80	48	75	
Special proceedings	2	7	21		3						22				37	22	38	41	8	
Criminal	679	510	343	107	420	55	69	83	25	66		3	8	8	50	35	40	36	11	
Juvenile	654	759	839	627	725	67	84	89	73	98	26	33	12	65	245	126	182	168	78	
Bastardy	30	38	39	48	17	14	9	6	3	7			1		4		2	5	2	
Totals	4324	4579	4676	4336	3711	522	502	537	433	546	110	89	65	129	775	469	547	546	496	
Civil	1710	1779	1737	1937	2131	133	103	141	110	106	44	16	24	30	181	137	169	129	120	
Probate	1251	1493	1918	1617	418	253	237	218	222	269	40	37	20	26	295	169	151	211	287	
Criminal	679	510	343	107	420	55	69	83	25	66		3	8	8	50	35	40	36	11	
Juvenile & Bastardy	684	797	878	675	742	81	93	95	76	105	26	33	13	65	249	128	187	170	78	
	4324	4579	4876	4336	3711	522	502	537	433	546	110	89	65	129	775	469	547	546	496	

[Endorsed]: Filed 4-6-44.

FIFTH CIRCUIT					TOTALS				
1939	1940	1941	1942	1943	1939	1940	1941	1942	1943
10	7	5		25	351	504	399	170	185
3	1	3		3	528	289	109	54	62
38	28	78	20	75	1751	1946	2445	2172	1057
40	30	36	45	70	1152	1267	1505	2010	2229
20	14	20	1	65	66	59	82	9	105
20	44	31	5	21	789	666	501	156	557
47	86	82	50	75	920	1144	1190	893	1143
4	6	3	1	4	50	58	51	52	32
182	216	258	122	338	5607	5933	6282	5516	5370
73	52	64	46	163	2097	2119	2095	2243	2581
38	28	78	20	75	1751	1946	2445	2172	1057
20	44	31	5	21	789	666	501	156	557
51	92	85	51	79	970	1202	1241	945	1175
182	216	258	122	338	5607	5933	6282	5516	5370

(Testimony of Gustaf K. Sproat.)

Mr. Anthony: That is all.

Mr. Ennis: No cross-examination.

(Witness excused.)

Mr. Anthony: At this time, if your Honor please, I would like to offer in evidence a series of memoranda issued out of the Hawaiian Department and Central Pacific Area, directed to the troops under that command. These have been produced at my request by Counsel for Respondent, and relate, if the Court please, to the subject of military dress, carrying gas masks, side arms, saluting and passes. I later will argue to your Honor the effect [410] of these. In brief, I might say the purpose is to show that this is, in fact, a supporting base for the training of men and transportation of troops to the front, and not in any real sense a combat area. They cover the period of December 7, 1941, to date.

The Court: What are they entitled or designated?

Mr. Anthony: It is a rather long title, your Honor. The title is "Hawaiian Department and Central Pacific Area Memorandum Circulars, Miscellaneous Letters Pertaining to Military Dress, Carrying Gas Masks, Side Arms, Saluting, Passes." (Handing file of papers to the Court.)

The Court: Received in evidence as Exhibit "I".

(Petitioner's Exhibit "I" was received in evidence.)

Mr. Anthony: I would like to offer, if the Court please, as one exhibit three letters, one from Galen M. Fisher to Charles F. Loomis, dated April 30,

1943; the second letter dated May 12, 1943, from W. A. Gabrielson, Chief of Police, to Mr. Charles F. Loomis; and, third, a letter dated 17 May, 1943, from Kendall J. Fielder, Colonel, G.S.C., A.C. of S., G-2, addressed to Mr. Charles F. Loomis. I have taken these letters up with Counsel. They admit their authenticity in delivery. The only question is their relevancy.

The purpose of these letters is to remove from doubt any innuendo that might arise out of the return and answer in this case as to the Japanese community. I might state in brief what they are. Mr. Fisher wrote to Mr. Loomis in which he asked six definite questions in regard to rumors that had been broadcast [411] in the mainland of the United States, which were known to all of us here to be false .These questions were in turn referred by Mr. Loomis to the Chief of Police and to the head of the Military Intelligence, Colonel Kendall J. Fielder. And written replies over the signatures of those two officers are contained in this exhibit. The reply of Colonel Fielder, head of the U. S. Military Intelligence, is as follows: (Reading)

> "I was surprised to learn that some of the many Island rumors about the Hawaiian Islands during the first few days of the war are still prevalent on the mainland. They have been repeatedly denied by all authorities.
>
> "In connection with the six statements that Mr. Fisher enumerated in a letter to you, it

can be positively stated that all are untrue. It is hardly worthwhile to refute them individually but it might be of interest for you to know that the movie, 'Air Force,' was censored and the scenes about the misuse of the Japanese trucks and the Japanese snipers on Maui were deleted before the picture was permitted to be shown in Hawaii.

"Having been in charge of military intelligence activities since June 1941, I am in position to know what has happened. There have been no known acts of sabotage, espionage or fifth column activities committed by the Japanese in Hawaii either on or subsequent to December 7, 1941.

Sincerely yours,

KENDALL J. FIELDER."

And a letter of similar importance from the Chief of Police.

The Court: Received in evidence as Exhibit "J".

(Petitioner's Exhibit "J-1, J-2, J-3" received in evidence.)

PETITIONER'S EXHIBIT J-1

(Copy)

Galen M. Fisher
11 El Sueno, Orinda, Calif.

April 30, 1943

Mr. Charles F. Loomis
P. O. Box 459
Honolulu, Hawaii

Dear Loomis:

Recently the following statements have been made in southern California and it is important that we be able to deny them, if they are false or partly so.

1. The movie, "Air Force," states that on December 7th Japanese trucks in Honolulu deliberately put out of commission several American air planes.

2. On December 7th American machine gunners cleared Honolulu streets of Japanese.

3. All over Honolulu were signs which read, "Here a Japanese traitor was killed."

4. The Government has prevented the Mainland from getting all the damaging facts as to Japanese sabotage, etc.

5. The Japanese military attacking force bombed Oahu on December 8 and 9, as well as on December 7, 1941.

6. One civilian from Honolulu told a Los Angeles clergyman that his truck had been used for about a week after December 7th for picking up dynamite planted by the Japanese traitors.

I know that the statements in the Tolan Report and by Edgar Hoover and by Blake Clark have stated or implied the falsity of some of these statements, but I should appreciate having your up-to-date reply.

Despite the execution of the American aviators and the statements made by General DeWitt to the House Committee here, the tide is slowly moving in the right direction, I believe.

Faithfully yours,

GALEN M. FISHER

[Endorsed]: Filed 4-6-44.

Mr. Anthony: I'd like to have Counsel admit that Colonel Kendall J. Fielder is a Colonel in the U. S. Army in charge of Military Intelligence during period referred to in the letter and [412] is now in this department head of the Military Intelligence.

Mr. Ennis: Admitted.

Mr. Anthony: I would like to have the admission that W. A. Gabrielson was at the time stated and is now the Chief of Police in the City and County of Honolulu.

Mr. Ennis: Admitted.

Mr. Anthony: That Mr. Charles F. Loomis is an employee of the Office of the Military Governor in charge or connected with the Morale Section of that office.

Mr. Ennis: Mr. Anthony, I don't know about that but I'll be glad to check on it.

Mr. Anthony: The Colonel can tell you right now.

Colonel Slattery: I do not know.

Mr. Anthony: There is a Morale Section under General Order 56, dated January 26, 1942. Do you want a little time before you——

Mr. Ennis: I'd like to have a little time to check on it and make the admission if it is true.

The Court: You have read Colonel Fielder's statement into the record. What is the substance of Chief Gabrielson's letter?

Mr. Anthony: The Chief's statement is in a little more detail, your Honor. The Chief in substance says that he has read the questions submitted to Mr. Loomis by Mr. Fisher of California, and he answers them categorically: (Reading)

> "The statement that Japanese trucks in Honolulu deliberately put out of commission several American air planes is an absolute lie. The Military and Naval [413] Intelligence services and the F.B.I. can verify that there were no Japanese trucks on any airfields, nor did any such trucks do any damage in Honolulu on December 7th.
>
> "2. There was no congregation of any crowds, and the Army, Navy or Marine Corps was not called on to preserve order in the city. No American machine gunners cleared Hono-

lulu streets of any Japanese before, on or after December 7th.

"3. The statement that all over Honolulu had signs which read, 'Here a Japanese traitor was killed,' is another absolute lie.

"4. There was not one act of sabotage attempted by any Japanese or any other person during December 7th or thereafter.

"5. The Japanese bombed Oahu twice; on December 7, 1941, and sometime during the latter part of 1942, when four bombs were dropped in the hills back of the city.

"6. There was no dynamite planted by any Japanese or anyone else in or about Honolulu in December; and no civilian ever used a truck to pick up any dynamite.

"While no acts of sabotage were committed, the Japanese did maintain an excellent system of espionage.

(s) W. A. GABRIELSON,
Chief of Police."

I would like to offer in evidence a letter, if the Court please, from Mr. Ralph C. Scott, Vice President and Manager of the Bishop Insurance Agency, which sets forth the rates of marine insurance, rather of war risk insurance covering marine cargo transported between the Territory and the Pacific Coast, for the period October 5, 1941, down to December 9, 1943. These figures are in the rate per

hundred dollars of insurance. On October 5, 1941, the rate was five cents, which rate continued until December 12, 1941. No, that's incorrect, your Honor. On December 8, 1941, the rate was $4.00 per $100 of insurance, and then the [414] rate dropped down—I'm mistaken, your Honor. The following month it was increased to $5.00 per $100, then it dropped to $2.50, and then $1.50, up again to $2.00, down to $1.50, up to $2.50, down to $2.00, $1.50, $1.00, 87½ cents, December 8, 1943, 75 cents, December 9, 1943, 50 cents.

You have no objection to the admission of those figures and rates?

Mr. Ennis: No objection.

The Court: Received in evidence as Exhibit "K".

(Petitioner's Exhibit "K" was received in evidence.)

PETITIONER'S EXHIBIT K

[Letterhead of]
Bishop Insurance Agency, Ltd.
Honolulu, Hawaii, U.S.A.

April 4, 1944

J. Garner Anthony Esq.
c/o Robertson, Castle & Anthony
312 Castle & Cooke Bldg.
Honoluiu, T. H.

Dear Sir:

Re: War Risk Rates

In reply to your inquiry, the following are the War Risk rates charged by Marine Insurance Com-

panies on merchandise from the Pacific Coast to Honolulu for the periods mentioned:

From Oct. 5th, 1941 to Dec. 12th, 1941	.05
Dec. 8th, 1941 to Dec. 9th, 1941	4.00
Dec. 10th, 1941 to Dec. 23rd, 1941	5.00
Dec. 24th, 1941 to Jan. 21st, 1942	2.50
Jan. 22nd, 1942 to May 13th, 1942	1.50
May 14th, 1942 to June 3rd, 1942	2.00
June 4th, 1942 to June 10th, 1942	1.50
June 11th, 1942 to Dec. 3rd, 1942	2.50
Dec. 4th, 1942 to Jan. 6th, 1943	2.00
Jan. 7th, 1943 to May 16th, 1943	1.50
May 17th, 1943 to June 30th, 1943	1.00
July 1st, 1943 to Aug. 1st, 1943	.87½
Aug. 2nd, 1943 to Dec. 8th, 1943	.75
Dec. 9th, 1943	.50

Yours very truly,
RALPH C. SCOTT
Ralph C. Scott
Vice-Pres. & Manager

RCS:W

[Endorsed]: Filed 4-6-44.

Mr. Anthony: Your Honor, can we have a short few minutes' recess?

The Court: Yes.

(A recess was taken at 9:50 a. m.)

After Recess
(10:13 a. m.)

Mr. Anthony: If the Court please, I'd like to offer in evidence an exhibit prepared by the Tax Commissioner of the Territory of Hawaii, which has been submitted to Counsel, showing the business activity of the Territory from the standpoint view of the Tax Office, covering the years 1941 to 1943, inclusive, giving the gross amount of business done and the amount of taxes paid. The exhibit is broken down into the various types of businesses, sugar, pineapple, canning, wholesale, manufacturing, contracting, amusements, etc.

The Court: Any objection? [415]

Mr. Ennis: No objection.

The Court: Received as Exhibit "L."

(Petitioner's Exhibit "L" was received in evidence.)

PETITIONER'S EXHIBIT "L"

COMPARATIVE STATEMENT OF GROSS INCOME AND CONSUMPTION TAX COLLECTIONS AND THE TAX BASE FOR THE CALENDAR YEARS 1941 - 1942 - 1943

Business Activities	1941 Tax	1942 Tax	1943 Tax	1941 Base	1942 Base	1943 Base	1941 — 1943 Comparison Increase or Decrease Tax	Base
Retailing	2,853,845.42	3,832,233.65	5,003,503.27	190,256,170.98	255,481,987.83	333,566,551.08	2,149,657.85	143,310,380.10
Sugar Processing	790,311.55	776,354.30	973,210.01	52,687,384.14	51,756,901.57	64,880,602.43	182,898.46	12,193,218.29
Pineapple Canning	755,902.08	632,356.10	664,461.03	50,393,421.60	42,157,031.16	44,297,357.67	91,441.05•	6,096,063.93•
Other Canning	41,438.16	5,437.98	1,855.99	2,762,541.25	362,531.65	123,732.53	39,582.17•	2,638,808.72•
Producing	22,939.10	23,371.59	41,597.77	9,175,640.00	9,348,636.00	16,639,108.00	18,658.67	463,468.00
Wholesaling	319,634.06	360,927.25	445,296.29	127,853,624.00	144,370,900.00	178,118,516.00	125,662.23	50,264,892.00
Certain Manufacturing	58,777.68	60,559.18	61,676.06	23,511,072.09	24,223,672.00	24,670,424.00	2,898.38	1,159,352.00
Printing & Publishing	49,519.05	72,795.98	58,074.35	3,301,266.54	4,853,060.47	3,871,619.45	8,555.30	570,352.91
Services	276,173.93	374,599.43	455,246.14	18,411,577.02	24,973,270.39	30,349,712.30	179,072.21	11,938,135.28
Professional Services	108,272.06	127,723.64	165,915.42	7,218,129.82	8,514,900.86	11,061,016.95	57,643.36	3,842,887.13
Contracting	370,994.85	1,985,017.01	1,282,864.22	24,732,965.12	132,334,335.02	85,524,195.80	911,869.37	60,791,230.68
Thea., Amuse. & Radio	106,584.72	110,910.84	184,652.64	7,105,641.51	7,394,048.60	12,310,163.70	78,067.92	5,204,522.19
Interest	53,301.21	44,498.34	39,499.45	3,553,410.23	2,966,553.05	2,633,294.00	13,801.76•	920,116.23•
Commissions	143,097.79	142,346.12	182,770.27	9,539,842.74	9,489,731.85	12,184,672.49	39,672.48	2,644,829.75
Rentals	367,489.23	428,121.19	491,181.35	24,499,257.35	28,541,384.11	32,745,390.61	123,692.12	8,246,133.26
All Other Income	127,333.67	166,324.24	199,329.94	8,488,903.06	11,088,271.57	13,288,649.38	71,996.27	4,799,746.32
Consumption Tax	233,599.98	154,727.97	141,917.70	15,573,316.71	10,315,187.70	9,461,170.51	91,682.28•	6,112,146.20
Sub Totals	6,679,214.54	9,298,304.81	10,393,051.90	579,064,164.07	768,172,403.83	875,726,176.90	3,713,837.36	296,662,012.83
Penalties	2,583.10	2,225.66	2,470.79				112.31	
Totals	6,681,797.64	9,300,530.47	10,395,522.69	579,064,164.07	768,172,403.83	875,726,176.90	3,713,725.05	296,662,012.83
License Fees	29,929.00	30,082.00	33,308.00				3,379.00	
Grand Totals	6,711,726.64	9,330,612.47	10,428,830.69	579,064,164.07	768,172,403.83	875,726,176.90	3,717,104.05	296,662,012.83

• Figures circled in pencil.

OTHER COMPARATIVE DATA

Grand Totals For The Calendar Years:	Tax	Base
1936	3,550,538.58	353,697,498.49
1937	3,639,972.97	394,090,226.23
1938	3,689,379.29	373,936,139.05
1939	4,247,863.40	394,806,253.64
1940	5,135,878.28	433,906,898.71

	1st Div.	2nd Div.	3rd Div.	4th Div.	Territorial
1943 Collections	9,333,565.50	278,068.37	610,692.94	206,503.88	10,428,830.69
1940 Collections	4,416,856.46	179,912.94	409,094.24	130,014.64	5,135,878.28
Increase	4,916,709.04	98,155.43	201,598.70	76,489.24	5,292,952.41
Increase Percentages	111.3%	54.5%	49.2	58.8%	103%

Tax Commissioner's Office
January 15, 1944.

[Endorsed] 4-6-44

tion are true and agree that this stipulation shall be offered in evidence as proof and evidence of the facts herein recited:

"Commercial cargoes shipped into the Territory of Hawaii from continental United States by surface vessels during the years 1942 and 1943 were of the amount of 993,797 tons——"

The Court: That's from Hawaii that you're talking about?

Mr. Anthony: From continental United States to the Territory of Hawaii (continuing):

"——and 1,010,437 tons respectively. The total tonnage of such shipments out of the Territory to the mainland during the same period was 1,310,469 tons and 1,542,769 tons. The total number of civilian passengers entering the Territory by surface vessel from January 1, 1942 to March 31, 1944 was 23,492 and the total number leaving was 31,626. Many hundreds of merchant vessels have cleared the Port of Honolulu from December 7, 1941 to the present time. No merchant ships plying between Hawaii and continental United States have been sunk in the years 1942, 1943 and 1944 but a few merchant ships have been attacked by the enemy.

"There have been a considerable number of flights daily of passenger and cargo planes over the route between San Francisco and Honolulu during the period 1942, 1943 and 1944, depending upon the weather and the demand for such transportation. During 1943 and 1944 there

have been routine daily flights by passenger and cargo planes of the Naval Air Transport Service over the route from Honolulu to Palmyra, Funafuti, Espiritu Santo, Brisbane, Australia and return, over the route between Noumea, New Zealand, Espiritu Santo and return and over the route between Honolulu and Midway and return and over the route between Honolulu, Johnson, Tarawa, Guadalcanal and return. There have been similar flights during the same period by passenger and cargo planes of the Army Transport Command over the routes between Honolulu and San Francisco and return; Honolulu, Canton, Fiji, New Caledonia, Brisbane, Australia and return; Honolulu, Johnson, Tarawa, Guadalcanal, Milne Bay, New Guinea and return; Honolulu, Christmas, Penrhyn, Borabora, Society Islands, Tonga, Fiji and return."

The Court: Will you inform the Court when the last attack [417] was made on ships, surface ships, between the Hawaiian Islands and the Pacific Coast?

Mr. Anthony: Your Honor will, of course, appreciate that the Petitioner in this case is extremely limited in his ability to obtain proof. In other words, it is a proof of an issue that lies almost exclusively within the possession and control of the other side, and the Petitioner is given just such information as the authorities think is proper and should be given.

The Court: Can you give the number of ships making the passage during this term of two years, from the beginning of 1942 to the end of 1943? You say that none of them have been destroyed but some have been attacked during that time. It would be informative to know what part of that time, and whether the attacks continue now to the present time.

Mr. Anthony: Your Honor, I asked in a letter addressed to the Attorney General a series of questions, asking them to produce evidence. Of course, I advised the Attorney General that neither I nor this Court want to have anything come out in the evidence that would be of any aid or comfort to the enemy. I did ask for precise information on the very question that your Honor has pronounced. I don't think I put it in the form of a last attack. Is there any objection to giving that, Mr. Hughes?

Mr. Ennis: I don't think we are prepared to answer that now, your Honor. I appreciate the point of your Honor's question. The Government will consider it. I might say, for the record, that in a public trial of this character, it is the disposition of [418] the Government to assist opposing Counsel in every way that we can, subject to the requirements of the military secrecy. And I will take your Honor's point under consideration.

The Court: Yes, it quite clearly appears from the material that has been put in thus far that the Government has been cooperative in that matter.

Mr. Anthony: That is quite right, your Honor. The Government has very readily furnished information within the limits of what the Army and Navy think is permissible.

LLOYD C. DUNCAN,

a witness in his own behalf, having previously been sworn, resumed and testified as follows:

Redirect Examination

By Mr. Anthony:

Q. Mr. Duncan, approximately how long did that trial of yours take down there in the Provost Court?

A. From about ten to fifteen minutes.

Q. Tell the Court whether or not you were seated during the trial or how was it conducted?

A. Well, the witnesses and myself and the Prosecutor stand before the Judge.

Q. During this ten or fifteen minutes?

A. Yes.

Q. And after sentence was pronounced on you, you were taken away? A. Yes. [419]

Q. Mr. Duncan, do you have any rules of conduct that govern civilian workers in the yard?

A. Well, yes, they have a book of rules of conduct for yard workmen.

Q. Is there anything there about your dealings with marines or sentries?

A. Well, only that when you pass the sentry and while you are in the yard you are supposed to have

(Testimony of Lloyd C. Duncan.)

your identification visible. That's about the only thing that concerns them.

Q. You are supposed to obey the directions of the sentry? A. Yes.

Q. When you told us yesterday that when you were before the Provost Court you knew you were in the wrong, what had you reference to?

A. Well, I meant that I'd be held responsible for any trouble that was caused, like the marine had created an issue and the fact that I had a difference of opinion with him, why he could say that I had been disorderly or that I had been obstructing him in his duties, that I would have no way of refuting that.

Q. That's what you meant by disorderly conduct? A. Yes.

Q. Your talking back to the marine?

A. Yes.

Q. As a matter of fact, your friend Weities did get on that truck that went to Aiea landing, did he not? A. Yes. [420]

Q. Is Weities here in the Territory now?

A. Yes, he arrived the day before yesterday.

Q. And you saw him for the first time while you were on the witness stand, is that right?

A. Yes.

Q. Do you know whether or not there was any reporter present when you were first taken before the Provost Court? On March 1st?

A. Well, there was the girl that was taking notes on it.

(Testimony of Lloyd C. Duncan.)

Q. And there was something said there, wasn't there?

A. Well, yes, just that I didn't have any witnesses and that the witnesses for the Prosecution weren't there, so they postponed it until the next day.

Q. Was there any charge read at any time?

A. Yes, they read the charge then, what I was charged with.

Q. Who read the charge?

A. The Prosecutor.

Q. Do you know his name?

A. I think it is Lieutenant J. G. Trini.

Q. T-r-i-n-i? A. Yes.

Q. He's the fellow that tried you on the following day? A. Well, he was the Prosecutor.

Q. I mean who prosecuted you the following day? A. Yes.

Q. While you were down in the county jail, did you receive any mail ordering you back to work?

A. Well, I received a letter from the Manpower Commission [421] telling me they had sent four previous letters to me to order me back to work, or threatening me with imprisonment or prosecution, and that they had finally ascertained that I was incarcerated in the City and County Jail.

Q. After you were released on bail, did you go back to your work?

Mr. Ennis: Objection, your Honor. I tried to be very lenient and let the Petitioner tell his story, but I really don't see what he did after he was

(Testimony of Lloyd C. Duncan.)

released on bail, as being proper here. That's an issue for the Court.

The Court: Sustained.

Q. Are you working now at Pearl Harbor?

A. No.

Mr. Anthony: That's all.

Mr. Ennis: I'd like to request Counsel to stipulate that the copy of the transcript which I used and which the Petitioner used in his cross-examination yesterday is the correct copy of the original transcript made by the stenographer, based on my assurance that that is true, and subject to any comparison that Counsel wishes to make.

Mr. Anthony: I don't quite understand that, your Honor. Are you offering that in evidence at this time?

Mr. Ennis: No, I am just requesting before the Petitioner leaves the stand——

The Court: What do you mean by the original? Is it the one filed with you? [422]

Mr. Ennis: No, your Honor; it is the Government's intention to offer the original transcript in evidence through the stenographer's testimony. But yesterday the Petitioner was cross-examined upon a copy of the transcript, and I merely want to stipulate that that copy is a correct copy of the original transcript made by the stenographer, upon my assurance that that is so, and subject to a comparison.

Mr. Anthony: I think we'll have no difficulty as to that, but I don't care to enter that stipulation at this time, if the Court please, Mr. Ennis. I am

(Testimony of Lloyd C. Duncan.)

prepared to agree that the papers that Mr. Ennis was using were true copies of what was returned—to the return and answer to show cause.

The Court: Is that satisfactory?

Mr. Ennis: Well, that will be sufficient now, and we can take the original transcript with our testimony.

Mr. Anthony: All right.

Mr. Ennis: No further cross-examination.

(Witness excused.)

JAMES WOODROW DUNCAN,

a witness in behalf of the Petitioner, being duly sworn, testified as follows:

Direct Examination

By Mr. Anthony:

Q. Your full name, please?

A. James Woodrow Duncan.

Q. Where were you born, Mr. Duncan?

A. Sheridan, Wyoming. [423]

Q. Are you the brother of the Petitioner?

A. Yes.

Q. Are you an American citizen?

A. Yes.

Q. Your brother? A. Yes.

Q. Your mother and father? A. Yes.

Q. What nationality are you?

A. Scotch-Irish.

(Testimony of James Woodrow Duncan.)

Q. Your brother is the same, I presume?.

A. Yes, sir.

Q. Mr. Duncan, after you learned of your brother's imprisonment, did you make any effort to ascertain the cause of his imprisonment?

Mr. Ennis: Objection, as irrelevant.

Mr. Anthony: It is just preliminary. I think it will be later, in view of the cross-examination of the Petitioner.

The Court: Well, it would appear to be irrelevant, but as an introductory or preliminary question I think it is proper.

Mr. Anthony: Well, I'll come to the matter right now, your Honor. We can argue it out right here and now. Mr. Ennis. by his cross-examination of the Petitioner endeavored to cast some reflection or make something of the fact that the Petitioner had not endeavored to seek a new trial, as he called it, which is something I never heard of in Provost Court. But I am going to prove that [424] this witness on the stand did that very thing.

The Court: Well, proceed.

By Mr. Anthony:

Q. After you learned of your brother's incarceration, did you have occasion to go down and see the Prosecutor? A. Yes, I did.

Q. Do you recall when that was, Mr. Duncan?

A. Well, that was on the Saturday following, a week from the Saturday following his trial.

(Testimony of James Woodrow Duncan.)

Q. Prior to that time, had you made any inquiry about witnesess that might have seen this incident? A. Yes, I did.

Q. And had you obtained written statements from witnesses? A. Yes.

Q. Did you have these statements with you when you interviewed the Prosecutor? A. Yes.

Q. Tell the Court what transpired between you and the Prosecutor.

A. I went in to see this Prosecutor. I had a statement from witnesses. However, it was not a complete statement. There was certain parts of it that they had not seen, and I wanted to clear up in my own mind just exactly what had taken place. So I went in and I asked to see a transcript of the trial.

Q. Asked whom?

A. I asked the Prosecutor.

Q. What did he say? [425]

A. He said that I would not be permitted to see a transcript of the trial; however, he could practically tell me verbatim the testimony of the two marines.

Q. Did you have a conversation with him about that then?

A. Yes, I talked to him about a half hour altogether.

Q. And did you tell him that you had witnesses to the effect that Lloyd didn't assault the marines?

A. Yes.

Q. What did he say to that?

(Testimony of James Woodrow Duncan.)

A. Well, I asked him if I could get a new trial on the ground of new evidence, that I had statements from witnesses, but he said that statements from witnesses would not be considered new evidence because the evidence was available to us at that time, that it had not come to us at a later time, that if we so desired we could have obtained these witnesses at the time of the trial.

Q. You said you had a written statement with you at that time? A. Yes, I did.

Q. I hand you a piece of paper and ask you if that is the statement to which you refer? (Showing witness a piece of paper.)

A. That's it. (Mr. Anthony hands same to Mr. Ennis.)

Q. Was there anything said about getting a rehearing or seeing anybody else about getting your brother out of jail?

A. I asked the Prosecutor that, and he said that if I would go and see Colonel Morrison and present my case that he might commute the sentence. However, it would not be retried.

Q. Did he say anything else about Lloyd, that he might write [426] a letter?

A. He said after Lloyd had been in there a period of 60 days he would be able to write a letter and ask the sentence to be shortened.

Q. What did he say as to whether or not Lloyd could have gotten a retrial.

A. He said there was practically no possibility of that.

(Testimony of James Woodrow Duncan.)

Q. Now, you discussed with the Prosecutor the fact that these witnesses stated that Lloyd did not assault the marine or resist arrest, did you not?

A. Well—what was the question again, please?

Q. Did you discuss with the Prosecutor the fact that you had witnesses to the effect that Lloyd never assaulted the marines? A. Yes, I did.

Q. And what did the Prosecutor say about that?

A. Well, I told him that I had witnesses that Lloyd did not assault the marine and I wondered if in that case if that would have bearing on the trial as he was prosecuted under that. He said, however, if he disproved that charge they would still back down and pick up the charge of him resisting arrest and interfering with the marines' performance of duties.

Q. Did you have any conversation with the Prosecutor about the fact that Lloyd was right about this truck and the marine was wrong?

A. I was amused by that. The Prosecutor, I asked him, I said, he was telling me—rather, there was another person present [427] and we were talking about it, about the argument that was supposed to have taken place, and so this other person that was present made a remark that in reality the order was directly concerned with whether the truck was there or not. And I said, as a matter of fact, there was a truck there for him, wasn't there? And he didn't know how to answer me. He cleared his throat and got up and spat.

(Testimony of James Woodrow Duncan.)

Mr. Anthony: We offer this statement in evidence, not for proof of the facts therein contained but for proof of what transpired and what connection it has with this witness' effort to bring the matter to the appropriate authorities.

Mr. Ennis: I object to admitting this paper in evidence, your Honor, on the grounds that there has been no basis whatsoever for offering in this record the hearsay statements of those persons about their view of the event.

Mr. Anthony: It is not offered for that purpose, your Honor. Those witnesses will be available to the Court. It is offered for many purposes, however, which are relevant. One is on the question of: if the man had had Counsel at the time, he would have gotten these witnesses. Here is a statement of four witness—three witnesses—three days after he was tried. Had he been represented by Counsel or advised of what his rights were, his rights to a continuance, he would have produced these.

Mr. Ennis: I didn't understand the witness to testify that the Prosecutor read this statement, your Honor. So even for the limited purpose it is not admissible.

The Court: The offer is denied. [428]

Mr. Anthony: May we have it marked for identification?

The Court: Yes, it may be marked for identification. It seems sufficient to show that the wit-

(Testimony of James Woodrow Duncan.)

ness did approach the Prosecuting Officer and endeavored to get a retrial.

(Received and marked Petitioner's Exhibit No. 2 for identification.)

Mr. Anthony: That is all.

Cross Examination

By Mr. Ennis:

Q. Did you make any effort to speak to the Judge about your brother's case, Mr. Duncan?

A. No.

Q. Did you make any effort to speak to anyone except Lieutenant Trini?

A. I went through my shop, to the masters, trying to have something done about it that way. However, nothing was done.

Mr. Ennis: That's all.

(Witness excused.)

Mr. Anthony: If the Court please, I have witness Weities who, as your Honor has heard from the Petitioner on the stand, is now in this port. He will not be available until this afternoon. I would like to offer his evidence. I don't know whether it would be objected to or not.

The Attorney General has advised me that the Governor would like to confer with Mr. Ennis, Mr. Hughes and myself before testifying here, which I think in respect to the Chief Executive the [429] request should be granted. With the exception of taking the testimony of these witnesses that I have referred to, and the Governor, I am prepared

to close my case now, and I suggest that we have that interview at the present time, if that is agreeable to Counsel and have the Court adjourn until this afternoon. The Attorney General is here to speak for the Territory, your Honor.

The Court: It is quite agreeable to the Court that you should have that time for conference beforehand. And what time shall we recess to?

Mr. Ennis: Would 1:30 be satisfactory to your Honor?

The Court: One-thirty is satisfactory. The Court is recessed until 1:30.

(The Court recessed at 10:46 a.m.) [430]

Honolulu, T. H.
April 6, 1944
1:33 o'clock, p.m.

(The hearing was continued.)

The Clerk: Habeas Corpus Docket No. 298, in the matter of the application of Lloyd C. Duncan for a Writ of Habeas Corpus, called for further hearing.

Mr. Anthony: Your Honor, I have in attendance in this Court a number of witnesses that were witnesses to the fact of the alleged assault, two of whom are the seamen that were referred to in the Petitioner's testimony, and they are due to report back to their ship at Pearl Harbor at three o'clock—all of which means that if their evidence

is to be taken it must be taken now. What I am requesting this Court to do is this—and I anticipate an objection on the part of Mr. Ennis to the receiving of their testimony—that I would like to take the evidence of the witnesses and argue to your Honor later the question of whether or not their evidence is admissible in this Habeas Corpus proceeding.

The Court: Upon your statement, what do you expect to prove by them? I don't quite follow the need for it. Do you want to prove the fact of the alleged assault, you say?

Mr. Anthony: No, your Honor. If I said that, I wish to hereby correct it. What I want to prove is the fact that Duncan at no time assaulted any marine, and he did precisely what the marines told him to do, and that there was no occasion for any arrest whatsoever. [431]

The Court: Well, that's an allegation of your petition,——

Mr. Anthony: That is correct, your Honor.

The Court: ——as to why the writ should have been granted. Well, the writ was granted. Let's hear what Counsel has to say.

Mr. Ennis: My position in a word, your Honor, is that the only purpose of such testimony is to retry the facts concerning the altercation between the Petitioner and the marines. Now, as I understand your Honor has ruled that we are not to retry that assault case, and since that could be the sole purpose of such testimony, I submit, your Honor, that it is inadmissible in this Habeas Corpus

proceeding, which is the sole purpose under the rule of the Supreme Court—to test the jurisdiction of the other tribunal.

Mr. Anthony: I'd like to make one statement in reply to that, your Honor.

The Court: Yes.

Mr. Anthony: If we were dealing with a judgment of a court of record that was being attacked or some other—maybe I should call it a regular ordinary court, that is, a court that is recognized by law—then the only thing that would be before the Court would be the judgment. Now, Mr. Ennis in his return apparently has not been satisfied with the so-called judgment of the Provost Court, but he has annexed to his return a complete statement of what was purported to have happened down at Pearl Harbor. In other words, he wants to persuade either this Court or some Appellate Court that the Provost Court did substantial justice [432] down there. That's the obvious purpose of it. Now, if he had just attached and did not propose to introduce in evidence the testimony, which of course is not admissible, if you have a good judgment,—the judgment is the only thing that is necessary—then that would be one thing. Now, I say that he, by attaching this testimony and relying upon it evidently as a support of a valid judgment of conviction, has waived whatever objection he may have heretofore had to a re-examination of the merits of what happened at Pearl Harbor on the day in question.

Mr. Ennis: The difficulty with that, your Honor, is that the reason for which this Provost Court record was attached was to meet the allegations in the petition that the Petitioner was denied Counsel; and it was necessary to put in the transcript to show that he was asked if he wished Counsel, and he agreed to go ahead without Counsel. Now, the judgment on its face would not show the record on that issue. And it was necessary to put in the transcript of the hearing, the testimony, to show that.

Mr. Anthony: Well, time is fleeing, your Honor. It is now twenty minutes to two, and I renew my request that I be permitted to take the evidence of these two witnesses. And I am prepared to argue at length at any time after their evidence has been taken as to the admissibility of such testimony.

The Court: Well, upon that stipulation I will hear the witnesses, subject to be stricken.

Mr. Ennis: I renew my objection.

The Court: All right. [433]

Mr. Ennis: And take exception.

Mr. Anthony: Is Mr. Weities here?

ROBERT WEITIES,

a witness in behalf of the Petitioner, being duly sworn, testified as follows:

Direct Examination

By Mr. Anthony:

Q. I'd like the record to show that the U. S. Attorney for the District of Hawaii is here present in Court and able to cross examine this witness, if your Honor please. (To witness) What is your name? A. Robert Weities.

Q. What is your job?

A. Merchant seaman.

Q. Do you know Lloyd Duncan sitting in the Courtroom here? A. Yes, quite well.

Q. How long have you known him?

A. Since 1937, '38.

Q. At the present time you are employed as a merchant seaman? A. Yes, sir.

Q. Do you recall an occasion on the 24th of February when you were ashore in this port?

A. Yes, I do.

Q. Did you see Mr. Duncan on that day?

A. Yes, I did.

Q. This is the first time you had ever been in this port? [434]

A. It is not the first time I had ever been in port; it is the first time I had ever gone ashore at Pearl Harbor.

Q. After you had your dinner, you decided to go back to your ship, did you not?

A. That's right.

(Testimony of Robert Weities.)

Q. With whom did you go?

A. With Lloyd and a friend of mine, a shipmate, Chris.

Q. State to the Court briefly what you did when you got back to it.

A. As it turned out, we didn't have to go through the gate in order to get to the ship, but we had gone to Honolulu by the upper highway and so naturally we didn't know that you didn't have to go through the gate. Pearl Harbor is Pearl Harbor to me. And we got off the bus at the main gate at Pearl Harbor, and the marines put us in the little enclosure there where they put the merchant marine while they are waiting for the truck to take them to the ship. We were there possibly an hour.

Q. How many marines were around there?

A. Oh, there's usually at least four or five there.

Q. All right, and then what happened?

A. And as the truck was about due to come up, there was some question as to whether we were supposed to go through that gate. I asked the marine to make sure, and Lloyd said, well, no, he was positive that we could get to our ship through that gate. It seems that I told him that we were somewhere near Aiea landing and it seems we could have gotten to Aiea landing through the main gate. [435] That's the way I understand it, anyway. So he told the marine at the gate—he told me that we should not listen to the marine, that we could go through the gate, and that led to one

(Testimony of Robert Weities.)

thing and another until there was words between him and the marine.

Q. Just a minute. Did you go through the gate in this truck?

A. Yes, I went through the gate in the bus and then walked through the gate and got on the truck.

Q. Now, how long did you sit in this enclosure?

A. At least an hour.

Q. That is, waiting for the truck to come?

A. Yes.

Q. Now, where did this argument occur?

A. After the hour was over, when the truck was up there, as I believe we may have even missed the first truck that was there on account of the argument.

Q. Now, what happened at this argument? Who came up to whom and who said what?

A. Well, it was the marine that told Lloyd that he had no business even saying anything to him about whether we should go through or shouldn't go through or what was going on. And Lloyd took offense at that, and at no time did Lloyd ever raise his hands against the marine as far as I know. He at least—in order to strike a blow you have to close your fist. I know Lloyd didn't close his fist at any time.

Q. Did you see the marine touch him at any time?

A. Well, he didn't, the marine didn't strike him with his [436] fist, etc. He was just pushed around, I'd say, just roughed up a bit.

(Testimony of Robert Weities.)

Q. What did Duncan do after he was roughed up by the marine?

A. Well, there was some talking going on there, and Duncan said, "You can't do this to me; I'm a citizen."

Q. He didn't know the marines, did he?

Mr. Ennis: I object to that remark and ask that it be stricken from the record.

The Court: It may be stricken.

Mr. Anthony: I have no objection.

The Witness: And there was some argument. The man had a hold of his badge, Lloyd's shipyard badge around his neck, and when he found out that he was a shipyard worker he seemed to think that Lloyd himself was a merchant marine.

Q. Did he say anything about being a shipyard worker?

A. Well, he said, "Oh, a shipyard worker," in a more or less tone of voice, I suppose.

Q. Then what happened after that?

A. Well, they shoved him off and they sat him down on a little bench, and about that time the truck, probably the second truck—I think I missed one; probably it lasted 10 or 15 minutes—and another truck came up and they said, "Well, here's your truck." So I got on this truck and went around to look for my ship, which I didn't find.

Q. Now, at any time did you see Duncan resisting arrest?

A. I didn't see Duncan—no. I didn't. [437]

Q. Did you hear anything about arrest?

(Testimony of Robert Weities.)

A. No, not while I was there. There was nothing about booking him on any charges that I know, not in my hearing at least.

Q. Did you ever see Duncan strike at the marine? A. No.

Q. After this argument occurred, he was told to sit down and he sat down, is that it?

A. Well, he got up and argued a little more, and then they shoved him back down.

Q. But after he finally sat down, why he stayed there?

A. To the best of my knowledge, while I was there.

Mr. Anthony: That's all.

Cross Examination

By Mr. Ennis:

Q. Mr. Weities, you arrived at the gate with Mr. Duncan on the bus and got off the bus and went inside the gate and sat in the enclosure?

A. That's right.

Q. Is that correct? A. Yes.

Q. And Duncan was with you?

A. That's right.

Q. You sat there together for an hour?

A. Yes.

Q. And did a bus pull up inside the gate, or a truck, which [438] you were to take before the first words were spoken with the marine?

A. Yes.

Q. And you had been sitting there an hour be-

(Testimony of Robert Weities.)

fore you asked the marine which truck you were to take? A. That's right.

Q. And it was yourself, and not Duncan, who asked the marine what truck you were to take, is that correct? A. That's right.

Q. And what did the marine tell you?

A. The marine said he wasn't sure whether I could reach my ship through the gate or not, but he didn't think I could.

Q. Now, could you identify that particular marine? Who was that? A. Yes, I can.

Q. What's his name?

A. I haven't any idea what his name is.

Q. Do you recognize him in the Courtroom here?

A. Yes, I recognized him on the street.

Q. Will you point him out?

A. The Corporal is right in the middle of the curtains there (indicating) and the other marine is right on the other side of the lady sitting there.

Q. Will the marine stand? Is this the chap you spoke to?

A. That's the Corporal of the Guard. I believe the other fellow was the one I asked the question of.

Q. Will you have the other one stand up? Is this the marine [439] you asked the question of? (Referring to a marine in the rear of the Courtroom.) A. Yes.

Q. Will you state your name for the record?

Private Hunter: J. C. Hunter, Private First Class, U. S. Marine Corps.

(Testimony of Robert Weities:)

Q. Now, Private Hunter told you that he didn't know whether it was the right truck or not, is that what you say?

A. He wasn't quite certain; evidently we didn't give him full information as to where the ship was, because I had no idea, it was just a matter I knew it was on the other side of the bay there.

Q. But what I'm trying to get there is not what you think, but what the words were as far as you can remember. What do you recall Private Hunter said?

A. Well, let's see, possibly he said something like "I don't think your ship is there, Mac; I don't think you have to come through this gate, Mac," or something of that kind.

Q. Where did you tell him your ship was?

A. I told him as near as I could figure out it was somewhere near Aiea landing. And as it turned out, it wasn't near there but at Pearl City.

Q. Where was it you came ashore?

A. At Pearl City.

Q. What made you think it didn't continue to be at Pearl City?

A. Frankly, I didn't know that was the name of the dock. I knew there was a Pearl City and there's a town that's not even on [440] the waterfront there.

Q. After Private Hunter told you that he didn't think that that truck would bring you to your ship —the ship wasn't at Aiea landing which you suggested—who spoke next? A. Lloyd.

(Testimony of Robert Weities.)

Q. What did he say?

A. He said, "Don't believe the marine; I know you can get to the ship through this gate."

Q. Did he use any profanity in that remark, in those words? A. Lloyd did not.

Q. He did later, though?

A. Not that I know of. He cautioned the marines about using profanity.

Q. What did Private Hunter say when Duncan told you not to pay any attention to Hunter?

A. I don't remember that.

Q. Well, didn't you testify on your direct examination that the marine stated that Duncan should not interfere with his instructions, didn't you so testify?

A. Yes, I believe I did, something to that effect.

Q. Well, who said that?

A. It would have been the marine.

Q. It would have been Private Hunter?

A. Yes.

Q. Then you testified on your direct examination that Lloyd Duncan took offense at the marine's remark. How did he show that [441] he took offense? A. Lloyd took offense?

Q. Yes.

A. Well, how does anyone take offense at anyone? Possibly he makes another remark himself.

Q. Well, what remark did he make?

A. Oh, possibly repeating himself, that the marines didn't always know what they were talking about, something to that effect.

(Testimony of Robert Weities.)

Q. That the marine didn't know what he was talking about?

A. Something to that effect possibly.

Q. Well, now, let's not leave possibly. You testified——

A. Well, I'm sorry if I can't remember the exact words of the argument.

Q. No, I don't want the exact words if you can't remember them. But you did testify that Duncan took offense at the marine's instructions to him not to interfere with the marine's instructions to you. Now, if you say that Duncan took offense, he must have indicated that to you in some way, and I want according to your best recollection how he showed that offense, by words or actions?

A. By words.

Q. And what is your best recollection as to what words they were?

A. Let's see, I'll try to remember that. Well, he repeated that I know that you can get through the gate. I remember that. He said, "I know that you can get through here, through the gate; you can get to your ship." [442]

Q. Did those words indicate taking offense to you?

A. They were certainly contradicting the marine.

Q. Did he use any other words? Did he use any words of profanity at that point in the discussion?

A. Not as I can remember it, no.

Q. Then is it your testimony now that he took

(Testimony of Robert Weities.)

offense because he merely repeated the remark, "Don't pay attention to the marine?"

A. Well, I don't know whether the argument started that way. The argument is over before you take a look at somebody to see if he is red in the face.

Q. Well, what happened next after Lloyd took offense and repeated his remark?

A. Well, there were words between Lloyd and the marine. The first thing I know, he was saying, "You get over here," or something to that effect, and shoving him aside. Naturally, there were a lot of people going in and out the gates and they wanted to get the argument out of the way.

Q. And you were there all the time during these words between the marine and Duncan, is that correct?

A. No, I won't say all the time, no.

Q. Well, up to the time?

A. Up to the time I got up on the truck, I was there.

Q. Now, I see. Were all of these words between Duncan and Private Hunter?

A. No, the Corporal was called out there. [443]

Q. When did the Corporal get into the picture, as you remember?

A. Oh, about three minutes after it started. He came out to find out what was going on.

Q. And did you observe Duncan talking to both Private Hunter and to the Corporal?

A. Yes, they were both there at the same time.

Q. Now, you testified on your direct examination that nobody struck anyone?

(Testimony of Robert Weities.)

A. No one struck anyone a blow with a fist that I saw, no.

Q. Well, did you see anyone strike anyone a blow at all? A. No, I didn't.

Q. So it is your testimony that no blows were struck in this matter which was under your immediate observation all the time? A. That's right.

Q. That's your testimony? And that the marine merely moved Duncan over and sat him down on the bench? A. That's right.

Q. Your answer is Yes? And you observed during this whole period, you observed the talking and the actions between the two marines on the one hand and Duncan on the other? A. Yes.

Q. When did you go on to the truck?

A. About possibly ten minutes, between ten and fifteen minutes after the little argument there. [444]

Q. And it was ten or fifteen minutes after what you call a "little argument" was all over?

A. Yes, I didn't have any idea that anyone would get into any trouble.

Q. And it was ten or fifteen minutes after Duncan was over sitting on the bench?

A. That's right.

Q. Where did you go on that truck?

A. Probably to every pier at Pearl Harbor—probably 30 or 40 men on the truck.

Q. Where did you get off the truck?

A. At the main gate.

Q. Didn't you get off at the pier where your ship was?

(Testimony of Robert Weities.)

A. No, I couldn't reach my ship by going through that main gate.

Q. You couldn't reach your ship?

A. No, we couldn't.

Q. I see. Then is it your testimony that the marine was correct in telling you that you couldn't reach your ship by that truck and that Duncan was wrong in contradicting the marine's instructions to you, is that correct? A. That's right.

Q. I see. When you came back to the main gate, did you speak to either of these two marines or any other marines? A. Yes, I did.

Q. You did? [445] A. Yes.

Q. What was the conversation and with which marine?

A. It was with the Corporal, and he took a bottle of rum away from me.

Q. He did? A. Yes.

Q. What was the conversation?

A. Oh, "What have you got there under your coat? Hold out the bottle." And he said, "You can't go out here with this bottle." So he took me in the office to take the bottle of rum away from me. He brought out a slip to the effect that he had taken it away from me, and then he turned me loose on the highway out there.

Q. You had been drinking with Duncan during that afternoon and evening, is that correct?

A. Yes.

Q. Did you have any discussion with the Corporal about the fact that the original instructions

(Testimony of Robert Weities.)

that had been given to you that you couldn't get to your ship by that truck were correct?

A. Yes, I did.

Q. What was said?

A. He said, "You shouldn't have listened to your friend."

Q. What did you say? A. I said, "Oh."

Q. How did you finally get to your ship?

A. I hitch-hiked.

The Court: How? [446]

A. Hitch-hiked.

Q. Where did you find your ship?

A. At Pearl City at the discharging docks.

Q. So that the upshot of this whole thing was that the instructions you were given initially by the marine guard were correct, and you finally got to your ship by the way they had indicated?

A. I tell you he didn't give me any instructions. He said he didn't think I could find the ship down there by going through the main gate. That was his contention, which was right. But he didn't know where, how I could find the ship. He didn't tell me how I could, because I hadn't given him enough information as to where he could tell me to go.

Q. Well, if he told you you couldn't go by taking that truck down through the main gate into Pearl Harbor, why did you insist on doing it?

A. Well, after all, I thought Duncan had been working there for months and months and he probably knew whether I could get to the landing or not.

(Testimony of Robert Weities.)

Q. You preferred to take Duncan's word to the word of the men who are on duty at the gates?

A. No, not necessarily, no, no, but by that time why the truck was there so I got in the truck to go and see if it was over there.

Q. Well, let me put it this way: You did take Duncan's word instead of the word of the marine?

[447]

A. So far as I got on the truck, I suppose I did, yes.

Q. Now, one final question. You observed this entire altercation between Duncan and the marines, and your testimony is that no blow was struck?

A. Yes.

Mr. Ennis: That's all.

Mr. Anthony: Just a minute. Did you see the marines pushing Duncan at any time?

The Witness: Yes, on the chest.

Mr. Anthony: But no blows?

The Witness: I didn't see them strike a blow.

Mr. Ennis: You didn't see Duncan strike a blow?

The Witness: I didn't see either of them strike a blow with a fist.

Mr. Ennis: Just a minute. You didn't see anyone strike a blow with a fist or object or any other way? All you saw was pushing?

The Witness: That's all.

Mr. Anthony: That's all.

(Witness excused.)

Mr. Anthony: Is there a witness by the name of Chris in the Courtroom?

COLUMBUS MATSLER,

a witness in behalf of the Petitioner, being duly sworn, testified as follows: [448]

Direct Examination

By Mr. Anthony:

Q. What is your name?

A. Chris Matsler, Columbus Matsler. Chris is a nickname.

Q. What's your occupation?

A. I'm a merchant seaman.

Q. Mr. Matsler—is it Matsler?

A. Matsler.

Q. Mr. Matsler, on February 24th of this year, were you in the company of Mr. Duncan and Mr. Weities? A. Yes, I was.

Q. Here in Honolulu?

A. Here in Honolulu.

Q. And did you go down to the Pearl Harbor gate in company with them, accompanied by them?

A. Yes, sir.

Q. Tell the Court briefly what happened to you after you got down to the gate?

A. Well we stepped off the bus and went through the gate and were immediately shuffled into what we call a "bull-pen," a little waiting place there. And, oh, we waited there for some time, I don't know for how long, possibly an hour, three-quarters. And I wasn't exactly satisfied with the idea as to where our ship was and I wanted to know. So I talked with one of the guards. And they didn't know where our ship was or how we could get there,

(Testimony of Columbus Matsler.)

but they did tell me that there would be a truck which would pick us up. [449] So I went back and sat down. And while I was sitting there, then Mr. Duncan and Mr. Weities went out and were talking with the guard again. As to what they said exactly, I couldn't say because I was sitting down for the time that he was speaking with the marine. I believe his name is Fisher. Isn't that Private Fisher? But when the Corporal came out, then they were talking, well, part of the time, rather loud.

Q. Just tell the Court what you saw Duncan do and what did the marine do at that time?

A. Well, Private Fisher came back and was standing by the gate to watch the people as they came through, and the Corporal and Mr. Duncan and Mr. Weities were talking. Well, while they were talking, one truck came in and left. Then another truck came in and we were supposed to get on that truck. I was told myself and I suppose that my friend was told to get to the truck at the same time.

Q. Who told you? A. The Corporal.

Q. You are on the same ship, are you?

A. Yes, we are on the same ship. He told me to get on this truck. So I stepped out to get on the truck, and then I saw that my friend wasn't there, so I came back. And in the meantime, we got—I suppose that he did take the truck.

Q. You what?

A. I suppose that my friend did take the truck. He evidently did. He told me that he did the next

(Testimony of Columbus Matsler.)

day. But at that time I [450] suppose that he did take the truck because I didn't see him at the time, so I went back and I missed the truck.

Q. What did you observe as to any incident between the marine and Duncan?

A. Well, they seemed, the marine seemed to be, well, just a little bit rough in his usage of Mr. Duncan.

Q. In what respect?

A. Well, in fact that Mr. Duncan had said that he contradicted him, and, well he told him to get back into the bull-pen or I will do so and so.

Q. And did he lay his hands on Duncan?

A. Well, not to strike him but to shove or to gesture as if to strike. He didn't strike him. They all had flashlights, and I know that they suggested that they might use them at any time.

Q. I didn't get that. They what?

A. He suggested that they might use their flashlights at any time. Well, one of them told me he'd bat me over the head with it if I didn't step back, and I just stepped back from the truck and I asked a simple question. Then after I suppose that Mr. Weities had gone by that time, I was standing in the office and I saw through the door that they were having quite a scuffle outside.

Q. What did you see?

A. Well, the marine corporal was evidently trying to subdue by words or with his hands in a mild sort of way—I don't know what he was attempting to do or what he thought he could do with his [451]

(Testimony of Columbus Matsler.)

his hands, as he went at it, but there was some rough words. I won't say obscene language used but rather rough words in the air. And then it came up about the shipyard workers, Mr. Duncan being a shipyard worker, and he went, he took hold of his badge and was going to jerk it off his neck, and there was quite a scuffle over that. And he eventually did pull the badge off Mr. Duncan's neck.

Q. And what did Mr. Duncan do?

A. Well, he sat down on the bench.

Q. Did he offer any resistance at any time to the marines after he sat down?

A. No, after he sat down he offered no resistance whatsoever. He sat there very docilely. And the marine came in into the office and there was an officer came down and was talking with him. He eventually—I don't know what length of time elapsed but I do know that officers came in and talked with the Corporal, they talked with the Corporal—the Corporal talked with the other marine, **Private Fisher.**

Q. Did they take your names as witnesses?

A. No.

Q. They never asked you for your name?

A. No, never asked us anything at all.

Q. How many marines were around there that you observed at that time, approximately? Just these two or were there others?

A. Oh, no, there were others. I would say, oh, at least six, five or six. I won't say positively but I know that there were more than the two of them.

[452]

(Testimony of Columbus Matsler.)

Q. At any time did you see Duncan strike the marine? A. No, sir, he didn't.

Q. That's all.

A. I say he did try to hold him off when he was trying to take off his badge, but he didn't strike him. He just held him off with his hands.

Mr. Anthony: That's all.

Cross-Examination

By Mr. Ennis:

Q. Now, Mr. Matsler, try and fix the first time that you observed Duncan talking to a marine. Was he talking to the Private whom you call Fisher? It's probably Private Hunter.

A. Yes, he was talking with Private Fisher first.

Q. Well, I think it is Private Hunter.

A. Oh, well, the Private.

Q. It is the one Private?

A. The Private and the Corporal.

Q. It is Private Hunter. Now, from the time you saw him talking to Private Hunter until the time you saw him sitting inside on the bench, did you have Duncan under your immediate observation during the whole period in which he was talking to both Hunter and the Corporal?

A. Under my observation, yes.

Q. You were watching the whole thing?

A. Yes.

Q. You said the marines subdued Duncan in a mild way with [453] their hands? Just what do

(Testimony of Columbus Matsler.)

you mean by that? Did they let him into the room where the bench was or what?

A. Well, my idea of subduing someone would be to either do it very emphatically or mildly, to lay your hands on him, and if you were to sit one in a chair, you'd push him down, or else you'd be affirmative about it.

Q. Well, just what action did you see in this case? A. In which case?

Q. Well, let's put it this way Which marine did you see subdue Duncan mildly?

A. The Corporal.

Q. Did he put his hands on him?

A. Yes, he did.

The Court: The answer was what?

(The Reporter read the last answer.)

Q. Did either one of these marines, either the Corporal or the Private, Private Hunter, say to you that he would bat you over the head with a flashlight? A. Yes, he did.

Q. Which one? A. The Private.

Q. The Private? How near were you standing to Duncan during all this?

A. Well, it's hard to say. I was standing possibly five feet away when it first started. And to the end of it probably 20, 30 maybe. I don't know how far it is exactly there. [454]

Q. Where were you standing when you were five feet away, in relation to the entrance lane and the exit lane at the main gate? Was it in the entrance or near it?

(Testimony of Columbus Matsler.)

A. Well, the entrance lane comes in and then there is a ledge, a step you might say, that one steps on and steps into the door, and I was standing just at the corner. There's a slit——

Q. You are aware, are you not, that while you were there waiting for your truck, in the interest of keeping the passage clear you are supposed to stay in the waiting place that has been provided?

A. Yes, it was my instructions to be there.

Q. What is it?

A. It was my instructions to be there.

Q. To be where? A. Where I was.

Q. Where you were standing? A. Yes.

Q. And from that point you can see everything that went on? A. Yes.

Q. You testified that you did see Duncan put his hands on the marine?

A. Well, to keep him away from him, yes, when he was pulling his badge. It's a natural reaction.

Q. Did he put his hands on the marine hard enough to bruise his face, for example?

A. Well, no. They did wrestle around a bit over getting [455] the badge. It is possible that it is very easy to scratch one's face or mark by rubbing him on the clothes. It might have been. I didn't notice such, but it might have been. But there was no blow struck.

Q. Duncan's hands might have bruised the marine's face?

A. His hands, no. His clothing possibly.

Q. But he put his hands on the marine?

(Testimony of Columbus Matsler.)

A. Yes, he put his hands on him.

Q. To hold him off when he was trying to get his badge?

A. In fact, they were rather close together. It might have been any part of his body, if there was a bruise. I didn't see one.

Mr. Ennis: That's all.

Mr. Anthony: Thank you.

(Witness excused.)

Mr. Ennis: May I state for the record at this time, your Honor, that Mr. Loomis, who was referred to this morning, is an employee of the Office of the Military Governor?

Mr. Anthony: On the payroll.

Mr. Ennis: He is on the payroll, yes.

The Court: Oh, yes, the Office of the Military Governor. He is the one to whom the inquiry was addressed.

Mr. Anthony: In regard to the Japanese. I'd like now to offer in evidence a series of newspaper clippings which I understand Counsel is going to object to, your Honor. I tried to pick out the ones that he can object to first. I offer in evidence [456] a clipping of the Honolulu Star-Bulletin, dated February 9, 1943, containing a statement by General Emmons.

Mr. Ennis: I have no objection insofar as the only thing offered is General Emmons own statement without newspaper or editorial comments.

Mr. Anthony: How about General Richardson's statement?

Mr. Ennis: Similarly, no objection with similar condition.

The Court: I see.

Mr. Anthony: May this be received in evidence? One exhibit—I'll mark each one separately.

Mr. Ennis: Well, now, I think it should be understood on the record, your Honor, that part of this paper which is being offered contains newspaper comment about the statement.

The Court: I understood that. Now, you agreed that, insofar as the quoted statement of General Richardson contained in the published article is concerned, that could be received in evidence. Is there any other statement there besides General Richardson's? Does it include Admiral Nimitz's statement?

Mr. Ennis: It's a newspaper story about it.

The Court: About Admiral Nimitz's statement?

Mr. Anthony: Not in this one.

The Court: Just General Richardson?

Mr. Anthony: General Richardson and General Emmons. What number will this receive?

The Court: Let me see the thing first. (Mr. Anthony hands [457] the Court a newspaper clipping) Well, it's rather difficult, as far as the first few columns go, to see just at a glance which is General Richardson's statement and which is General Emmons' and which is the comment.

Mr. Anthony: May I suggest this, your Honor? I think in about five minutes, if the Court would adjourn, Mr. Ennis and myself could go over these.

The Court: Oh, I thought that had been done.

Mr. Anthony: Well, I submitted them early in the trial, but I have not had the opportunity to go over them with Counsel.

The Court: We will take a recess for that purpose, then, to give you gentlemen an opportunity to iron out your difficulties, if you can.

(A recess was taken at 2:20 p.m.)

After Recess
(2:45 p.m.)

Mr. Anthony: If the Court please, I'd like to offer in evidence some statements by General Emmons and General Richardson, and I ask that this be received and marked "Exhibit O-1" or a series of them. This sheet has two statements, one by General Emmons, dated January 1, 1943, and the other by General Richardson, dated July 5, 1943. The clipping in the center is not offered, your Honor. I understand there is no objection.

The Court: No objection? Received in evidence as—have you got "N" in?

Mr. Anthony: "M" was the last one.

The Court: Why did you mark this "O"? [458]

The Clerk: It should be "N." The next is "N."

Mr. Anthony: That is correct, your Honor. That would be "N-1" that first set of clippings.

The Court: "N-1."

Mr. Anthony: The text of a radio address by General Richardson of June 7, 1943, "N-2."

The Court: Received in evidence.

Mr. Anthony: The text of proclamation of Admiral Nimitz proclaiming himself the Military Governor of the Marshall Islands.

The Court: What date?

Mr. Anthony: It is dated January 31, 1944, the proclamation. The clipping is dated February 4, 1944.

The Court: Received "N-3."

Mr. Anthony: The text of a speech of General Richardson before the Chamber of Commerce, dated July 15, 1943.

The Court: Received "N-4."

Mr. Anthony: The text of a message from General Emmons to the people of the Territory of Hawaii in the Star-Bulletin of May 27, 1943. Only the text is offered.

Mr. Ennis: Now, your Honor, in connection with the last one of General Emmons, I think that if his views on the situation are being put in that we should put in all of his views. And I would like to offer at the same time, so that it would be in the proper place in the record, General Emmons' statement as reported in today's Advertiser in connection with the possibility of attack by the Japanese on the West Coast of the mainland. I think that should be [459] put in at the same time.

Mr. Anthony: That is subject to the objection which Counsel is urging in excluding a number of statements which he is not prepared to receive, namely, that they are just off the record remarks. I'd like your Honor to withhold your ruling on that until we ascertain if similar statements by Admiral

Nimitz and others of the high command are to be received in evidence. I have no objection to all of these statements of the Army and Navy Command going in evidence, but I understand that Council will seek to exclude a number of them which I wish to offer.

Mr. Ennis: No, the only part which I wish is not the editorial or newspaper comment but merely that part of General Emmons' statement which is quoted, which is similar to the parts that Counsel for Petitioner is offering in evidence.

Mr. Anthony: Well, can we take the Respondent's case up when that is in order, your Honor?

The Court: What is the advantage of putting that in at this time? It would seem certainly appropriate to me if these other statements are to be put in of General Emmons. Of course, he had a direct responsibility here at the time he made the statements. And this relates to somewhere else besides the Hawaiian Islands. But it would seem appropriate to me that you could put that in as a part of your case, but hardly at this time to break into the Petitioner's case.

Mr. Ennis: Well, if your order indicates it is admissible, as these other statements are, why I am content to leave the offering [460] until later.

The Court: I see but little difference about it.

Mr. Anthony: At the same time I have no objection to having it go in right now.

The Court: I don't like to break the continuity of it in that way.

Mr. Ennis: Well, if Counsel states he has no objection to it, I will offer it later.

The Court: All right.

Mr. Anthony: I'll offer some more later, too. May that be given a number, please?

The Court: "N-5." What is the date?

The Clerk: May 27, 1943.

Mr. Anthony: A statement by the Secretary of the Navy, dated March 2, 1944. I am offering a quoted part, which is as follows:

> "We now go where we please in the Pacific and dare the enemy to come out and fight. We were out there challenging the Jap navy to come out and fight. And what did they do? Those ships which were in the vicinity turned and ran away."
>
> "* * * more than 50 aircraft carriers now are plowing the Pacific waters in search of the enemy."

That is by the Secretary of the Navy.

Mr. Ennis: No objection.

The Court: Received "N-6."

(Petitioner's Exhibits "N-1, N-2, N-3, N-4, N-5, N-6" received in evidence.)

PETITIONER'S EXHIBIT "N-1"

[Stamped]: ~~Jan 1 1943~~

Gen. Emmons Views Future With Confidence

By Lt. Gen. Delos Emmons, Military Governor and Commander of the Hawaiian Department

During the year which is now drawing to a close, all members of the armed forces—army, navy, ma-

rine corps and coast guard—and all elements of the civilian population have applied themselves industriously and wholeheartedly toward attaining the military security and safety of these islands.

The work has been difficult and has required the closest cooperation and coordination of all people here.

As we review the accomplishments of the year, it must be obvious to all that remarkable results have been accomplished.

By reason of the work which has been done, we are entitled to look forward with confidence and reassurance to the future.

I congratulate the people of the territory of Hawaii and all members of the armed services upon the zeal and spirit which they have displayed, and I take this occasion to extend to the entire population of the Territory my sincere and cordial greetings for the New Year, and to express the wish that they may continue in the future along the path they have so well outlined in the past.—Star-Bulletin.

[Stamped]: Jul 5 1943

Gen. Richardson Pays High Tribute

By Lt. Gen. Robert C. Richardson, Jr., Commanding General, Hawaiian Department

I am honored to have the opportunity of paying tribute today to the wardens' division of the office of civilian defense.

All the citizens of this territory share with me a deep pride in your organization.

Ever watchful over the skies, every ready to fight

incendiary bombs and fires, trained for defense against poison gas and in the use of chemicals, you are in reality just as much on a wartime basis as our soldiers, our sailors and our marines.

In case of an attack, on these islands, which is always a possibility, you will be obliged to serve under fire, when your efficiency and courage will be put to the test.

* * *

Today is the second birthday of your organization, which started in a very small way with the formation of a fire wardens' committee of the municipal major disaster council.

After Pearl Harbor the committee grew rapidly, suffered all the pangs of reorganization, and finally emerged as a defense unit of which any city might well be proud.

You comprise an able, efficient and patriotic group of citizens upon whom the territory must depend if attacked.

* * *

We should indeed be very thankful and grateful that time has permitted us to organize so formidably against attack, but one is never so well prepared that he can permit himself to rest on his oars and in the case of the Hawaiian islands we can not overlook the capabilities of our enemy, the Japanese, to strike at us again.

They are an astute, resourceful and relentless foe, and therefore we must never for one instant relax our alertness, nor our preoccupation with our defense.

Meanwhile, we are training our troops in offensive warfare as well as in defensive tactics.

I count upon you to uphold your present high standards because with your aid and with the aid of people like you who serve so willingly, so silently, and without ostentation, America can not fail to win this war.—Star-Bulletin.

[Endorsed]: Filed 4-6-44.

PETITIONER'S EXHIBIT "N-2"

[Stamped]: Jun 7 1943

Richardson Pays Tribute to Army-Navy-Civilian Unity

Star-Bulletin June 5, 1943

The text of his address follows:

"As I assume command of the Hawaiian Department I am impressed by the great development which has been accomplished in this area in the past 17 months.

"Under the able leadership of my predecessor, Lt. Gen. Delos C. Emmons, the Hawaiian islands have been transformed into a strongly organized outpost for the defense of the Western Hemisphere.

"This group of islands is now in a position to take care of any enemy who would be so rash as to attack it.

"The Hawaiian group is on guard, so to speak, for the entire Pacific coast of the United States, Canada, and our sister republics to the south, and as the war against the Japanese progresses these islands will be the base of the offensive drive against Japan.

Here Many Times

"It has been my good fortune to visit Hawaii many times during my service as an officer in the past 38 years, en route to and from the Philippines and more recently while on a mission a year ago throughout the South Pacific and Australia.

"The measures which have been taken in the past year to strengthen the defenses of these islands make of these islands a vastly different Hawaii today.

"Outwardly the change is not so noticeable, because nature—which has always been kind and generous to the islands—furnishes their best camouflage; but inwardly there has been a moral and spiritual change in the life of the people, who no longer take life in the Pacific for granted, but are acutely alert to their dangers and to their responsibilities.

"There is unusual unity between the civil population and the armed forces, both of which standing together are ready for any test to which they may be put. To the people at home, as well as to our fighting comrades all over the world I am glad to report from my new command that the state of the defenses of this outpost and of the training of the troops is good.

Civilian Workers Lauded

"It is gratifying and inspiring to feel the intensiveness of purpose displayed by our civilian war workers and by our soldiers in maintaining themselves in a state of readiness.

"There have been many necessary restrictions imposed on military and civilian personnel alike that have effected great changes in the daily lives of every man, woman and child on the islands; but these restrictions have been accepted in the finest spirit of cooperation, as everyone realizes that no chances can be taken in the defenses of Hawaii.

"The army, the navy, the marines and the coast guard are as one, and hand in hand with the civil government have created an atmosphere that is charged with an eagerness to get on with the war. There is a complete absence of complacency and a corresponding state of high morale.

Ideal Training Ground

"With their varied terrain, the Hawaiian islands offer an ideal place for extensive training in jungle and amphibious warfare and, taking advantage of those natural facilities, an intensive training in these types of warfare is in progress.

"Hawaii is the key to the Pacific and the key to the defenses of the western coast of the United States. There is certainly no doubt that Hawaii is one of the main approaches which our president declared will lead to Tokyo.

"Passing through here will be an ever increasing number of troops and an ever increasing amount of the machinery of war, all directed toward the very heart of the empire of Japan.

"On this day—the anniversary of the Battle of Midway—although we are much stronger than we were at that time, we are even more alert than ever.

"This anniversary will recall to every American

the sacrifices which have been made by our gallant comrades of the army, navy, marine corps and merchant marine who gave their lives for our country not only at Midway but in Guadalcanal, Tulagi, New Guinea, the Bismarck sea, Darwin, Africa, and Tunisia, and throughout the world.

"Our responsibility to these men is great. We will carry on to keep their memories alive for all time to come, and that they may know that their comrades who are left behind will never let them down."

[Endorsed]: Filed 4-6-44.

PETITIONER'S EXHIBIT "N-3"

* * *

The text of Admiral Nimitz' proclamation was as follows:

PROCLAMATION No. 1

To the People of the Marshall Islands:

In prosecuting their war against the Japanese it has become necessary for the armed forces of the United States under my command to occupy this and other islands of the Marshall islands.

It is the policy of the United States forces not to make war upon the civilian inhabitants of these islands but to permit them to continue their normal lives and occupations in a peaceable manner; so far as war necessities and their own behaviour permit.

In order to preserve law and order and provide

for the safety and welfare both of my forces and of yourselves, it is necessary to establish military government in the islands occupied by United States forces.

Therefore, I, C. W. Nimitz, Admiral, United States navy, commander in chief, United States Pacific fleet and Pacific ocean areas and military governor of the Marshall island areas occupied by United States forces, do hereby proclaim as follows:

I.

All powers of government and jurisdiction in the occupied territory and over the inhabitants therein, and final administrative responsibility, are vested in me as admiral, United States navy, commanding the United States forces of occupation, and military governor, and will be exercised through subordinate commanders by my direction.

II.

The exercise of the powers of the Emperor of Japan shall be suspended during the period of military occupation.

III.

All persons will obey promptly all orders given by me or under my authority; must not commit acts hostile to the United States forces under my command or in any way helpful to the Japanese; must not commit acts of violence or any act which may disturb public safety in any way.

IV.

Your existing personal and property rights will be respected and your existing laws and customs remain in force and effect, except to the extent that it is necessary for me in the exercise of my powers and duties to change them.

V.

Until further notice, United States dollar currency, overprinted "Hawaii" and United States coins will be legal tender in the occupied territory and all persons are warned against accepting or dealing in any other currency whatever, except as permitted under my orders.

VI.

So long as you remain peaceable and comply with the orders of the United States forces of occupation, you will be subject to no greater interference than is made necessary by war conditions, and may go about your normal occupations without fear.

VII.

Further proclamations and orders will be issued by me or under my authority from time to time. They will state what is required of you and what

you are forbidden to do and will be displayed at police stations and in your villages.

C. W. NIMITZ,
Admiral, United States Navy,
Commander in Chief,
United States Pacific Fleet and
Pacific Ocean Areas
Military Governor of the Marshall Islands.

Date: 31 January 1944.

Star-Bulletin 2-4-44.

[Endorsed]: Filed 4-6-44.

PETITIONER'S EXHIBIT N-4

GEN. RICHARDSON SAYS
HAWAII'S COOPERATION
IMPORTANT IN THE WAR

(Following is the text of the address by Lt. Gen. Robert C. Richardson Jr., commanding the Hawaiian department of the army, and military governor of the territory, at the quarterly luncheon meeting of the Honolulu Chamber of Commerce today.)

Jul 15 1943

It was with a great deal of hesitancy that I consented to address the chamber of commerce today. Not that I am not very appreciative of the honor you have done me as representative of the army, but because of my deep conviction that it is better

Petitioner's Exhibit N-4—(Continued)

for general officers to perform rather than predict. Like the old saw relative to children, they should be seen and not heard.

In time of peace our people are not interested very must in their army and navy and the public regard their generals and admirals with mingled feelings of curiosity and amusement.

Their opinions are rarely sought and their influence is negligible.

When the war comes, however, the story is different, and the people are suddenly interested in the men who are to lead the armed forces and safeguard the country, as what these leaders do and say often has a great impact on the life of the nation.

They are charged with great responsibilities, of which the greatest is to lead their troops successfully in battle.

"Who are these men," you ask yourselves quite naturally, "to whom we have given our fortunes and our sons so that they may save our civilization? What are they doing and what have they accomplished?"

* * *

'Where Do We Stand?'

This thought prompted me to try to summarize our position in the subject: "Where Do We Stand?"

Many men much more learned that I have explained the reasons why we are in this war. They all boil down to our determination to defend what

Petitioner's Exhibit N-4—(Continued)

we have which Germany and Japan threatened to take away from us.

Fundamentally, the basic reasons are economic, the truth of which can best be revealed by a simple statement made by a Roumanian officer to me some years ago.

OUR GROWTH. Time is rushing on so fast and so many events fill our lives that we are apt to forget how unprepared we were just three short years ago.

To appreciate where we stand today we must recapture where we stood only recently and cast a backward glance at the army's weakness.

In 1920 our regular army numbered 118,000 men only, just about enough to form one army corps, whereas today we have 15 corps, not to mention our armies, task forces, and services.

In 1940, 20 years later, we had 185,000 men of the regular army, supplemented by 120,000 national guard and a corps of 100,000 reserve officers, a derisory number to protect 130,000,000 people.

Only 12,000 regular officers were available to begin the great task of expansion.

Reaching 7,500,000 Mark

Today we are rapidly reaching 7,500,000, of which 2,000,000 are in the air corps, and simultaneously the navy, marines, and coast guard are growing to the respectable figure of 2,000,000, or an over-all figure of nearly 10 million men—one of the largest armed forces in the history of any nation.

Petitioner's Exhibit N-4—(Continued)

To an audience of this character it is unnecessary for me to dwell on the problems involved in this tremendous expansion—problems of food, shelter, construction, clothing, transportation, armament, and equipment, to mention a few.

Some of the problems seemed insurmountable, but the army, navy, business and industry, working together, gradually licked them to such a degree that the armed forces have been able to develop almost rythmically according to plan.

* * *

Shortly after the fall of France our leaders realized that our armed forces were dangerously weak and under the leadership of our president congress authorized calling into service the national guard in September, 1940, and passed the selective service act in October, 1940.

Canal Protected

Meanwhile, the president threw a protective chain around the Panama canal by the acquisition of bases in the Caribbean sea and in the Atlantic.

We were not yet at war, but as I look back upon those steps in preparedness it seems to me that the nation should be very grateful for the farsightedness of our leaders which gave the nation a running start when we were forced into the great conflict by the disaster at Pearl Harbor.

It is only necessary to compare our condition on December 7, 1941, upon entering the war, with that when we declared war in April, 1917.

Petitioner's Exhibit N-4—(Continued)

In World War I we started from scratch, whereas in World War II we were quite far ahead of the game.

But after Pearl Harbor the nation took a dive into the war and went to town on the preparedness of our army and navy.

* * *

Even though the war department had made many war plans for all eventualities no human being could have foreseen that the modern war would require so many different types of units and that it would be fought all over the world.

Under All Conditions

The character of the war soon showed that our organizations would have to be adapted to fighting in all climes and under all conditions and therefore the war department was required to develop not only divisions, with their attendant services, but new, strange units—tank corps, airborne divisions, parachute troops, antiaircraft regiments, dive bombers, fighters, heavy bombardment, machine guns, and antiaircraft armament of all calibers and vehicles galore of all types, sizes and shapes—new and strange.

When I see it all today and realize that it has been developed in two and one-half short years it seems that a miracle has taken place in our country.

There have been many miracles in the last two or three years, but I think that without doubt the greatest has been the transformation of our peacetime industry to total war production.

Petitioner's Exhibit N-4—(Continued)

But the mere possession of equipment and raw men by no means makes an army.

The training of these men within their new organizations was a very difficult problem; first, because our people fundamentally are opposed to what is known as armed discipline.

They are naturally afraid of regimentation or living a regulated life.

Followed Public Opinion

In the early days of the training of the army the leaders of the army were forced to follow public opinion, which seemed to insist that new men coming into the army should be treated almost gently.

We looked upon it as an age of pampering and coddling, and were dismayed and chagrined at the thought that perhaps Americans had become soft.

But we quickly found that the men themselves detested that attitude and with few exceptions welcomed the most Spartan discipline which has always characterized the army and without which long experience has taught us battles can not be won.

* * *

As illustrative of the effect of such coddling on our soldiers I recall an actual happening in connection with a sentry on guard.

As all of you know, whenever a strange person approaches a sentry post at night the sentry is required to challenge him in good resounding English, "Halt, who goes there?"

But in this early army we were developing the sen-

Petitioner's Exhibit N-4—(Continued)

try on duty, perhaps under the spell of the age of pampering, cried, "Halt, who is this please?"

It was not long, however, before our new army realized what was meant by the word "discipline."

Value of Discipline

They quickly found that it is disassociated entirely from punishment and is synonymous with good training. A disciplined soldier is a trained soldier. He observes law and order.

One of the most formidable problems which confronted the army was the training of officers.

Although we had 100,000 reserve officers, many of them were classed too old for combat duty and it was necessary to have recourse to officer candidate schools, in which most of our finest young officers have been developed.

* * *

The mere acquisition of the uniform has nothing to do with making an officer. He has to shed not only his civilian clothes but a certain mental attitude toward life.

He must divest himself largely of expediency and view his work in terms of what is best for the interests of the country.

That is much more difficult than it sounds. It is not until he gets the feel of being a member of a large fraternity which is working for an ideal that he can be characterized as an officer.

Petitioner's Exhibit N-4—(Continued)

Same Influence Necessary

To a lesser degree the same influence is necessary to make a soldier. Until a man has been in the service at least six months and absorbed the ethics of the army—which, after all, are very high—he is unhappy and feels that he is in an alien world.

But once he has acquired the feeling of being a member of a fraternity his whole outlook on the profession changes.

In this new army—which is your army—there has been achieved an amalgam of all the various components. The regular army, reserves, national guard have all been obliterated and now form one army—the army of the United States. In it is all the talent of our country. It represents a mosaic of habits, customs, thoughts of our great land.

Rubbing shoulders are the boy from the country and the boy from the city, the rich boy and the poor boy, the farmer and the college professor, the chemist, and the welder—all united by the same sense of duty.

Strength Is Felt

Speaking as a commander who has seen the army grow and who for the first two or three years felt its weakness, I can now say with conviction that I am beginning to feel its strength like the strength of a man who has been convalescing and who now feels the warm blood of health running through his veins and urging him to try his powers.

The army is now becoming seasoned and acquiring maturity and it represents today an institution

Petitioner's Exhibit N-4—(Continued)

which is full of virility and in which our American manhood is being reborn.

This great army which I have attempted to describe is fighting on battlefronts all over the world which do seem fantastic when the list is called. Guarding the Panama canal we have troops in the Bahamas, Cuba, Panama, Antigua, Santa Lucia, Trinidad, Curacao, British Guiana, Guatemala.

* * *

In the Atlantic further north we have them occupying the Bermudas, the North Atlantic, Newfoundland, Greenland, Iceland, Great Britain.

Farther south, Africa and Islam, North Africa, and now Pantelleria, Lampedusa, Sicily.

Again we have them in Trans-North Africa, West Africa, Eritrea, Egypt, Iraq, Iran, Indo-China, India, Burma, China. Again in the southwest Pacific, Australia, New Guinea, Woodlark, Trobriand islands, Solomons, Fijis, Tahiti and other islands too numerous to mention, all looking toward Hawaii as their supporting base.

World Strategy

The world strategy decided upon by the leaders has necissitated the occupation of all these islands by our troops. It is no secret that our compass has been set to defeat Germany and Italy first.

Europe is being encircled by a great steel ring and I do not mean a Nibelungen ring. We are now on the perimeter, slowly closing the ring around the continent.

Petitioner's Exhibit N-4—(Continued)

When that has been accomplished and Germany and Italy fall, the weight of the United Nations will be turned to the Pacific.

* * *

In the meantime the Pacific has undergone in the last few months an extraordinary development. Without mentioning any names of islands, this whole great area is a series of magnificent bases from which our aircraft can operate and which form a great line of communications to Australia.

From a trickle of planes which passed through here one years ago a stream has developed, and we are looking forward to the not too distant future when that stream will become a torrent.

At the present moment the offensive has been grabbed by us from the Japanese and instead of being on the receiving end we are now on the giving end and are hammering at the defensive perimeter. Slowly but surely the center of gravity of operations is moving north and northwest toward Japan, with the idea of depriving her of her airbases.

Not Basis of Judgment

In this area your interests naturally are centered on the war against Japan.

Many of you in this audience know the Japanese profoundly, but your association with them in Hawaii does not furnish a basis to judge them on the field of battle.

From all the reports that have reached me they

Petitioner's Exhibit N-4—(Continued)

are a resolute, resourceful, determined and cruel enemy.

They are relentless and indoctrinated with military arder to the point of fanactism.

Their psychology has been determined by years of indoctrination that the soldier represents the highest expression of man's occupational life.

Nearly all of the nations throughout history have rather despised their soldiers and looked upon them as mercenaries.

But the Japanese have always extolled the armed forces.

* * *

Proverbs Show Attitude

Although the Chinese are emerging from their former contempt of soldiers, a reading of their early proverbs gives an insight into their attitude.

As they formerly said, "Good iron is not for nails nor good men for soldiers." Or again, "It is better to have no son than one who is a soldier."

Even the Germans who today extol their soldiers, said, "Soldiers deserve to be well paid and well hanged."

And the French, who have always looked down on the professional soldier, remarked "Old soldier, old idiot."

And even the Russians, in their proverbs, speak contemptiously: "Flog two to death and train one."

But the Japanese say, "Among flowers the best is the cherry blossom; among men the best is the soldier."

Petitioner's Exhibit N-4—(Continued)

It is that psychology that makes the Japanese soldier a formidable foe.

With the increased tempo of the war in this area, Hawaii becomes more important than ever as a great base and a support of future operations against the Japanese.

* * *

Must Remain on Alert

We must not, however, allow ourselves to become overconfident or feel that we can be less alert because we read in the papers that our navy has sunk four more warships or that our army has taken a few more island bases.

The people here must realize and understand that they are in a war zone, where anything can happen, any day, at any time.

Our enemy is resourceful and in my judgment will leave no stone unturned to humiliate us even at great sacrifice to himself and he would be willing to risk a great deal and gamble with his assets if he could inflict destruction upon even a part of these islands.

The location, therefore, of the islands in the war zone has subjected the people of this territory to military law, which is nothing else than the law of necessity.

I realize that it is natural for civilians, who are not accustomed to any control by the military, to chafe under military law, but let me put it before you in this light: Is it better to satisfy one's personal feelings and do without military law than to

Petitioner's Exhibit X-4—(Continued)

live in the knowledge that it is done for the safety of our country?

* * *

Weight Personal Desires

At a time like this it is essential that every citizen weigh his personal desires, his business profits, his decisions, all in terms of the interest of our country.

The people of the territory have been most patriotic in acquiescing to martial law, and have supported the general orders in a manner that calls for great praise.

Last March there were returned to the civil authorities many of their normal functions, but it was found necessary to retain under the control of the military governnor the labor engaged upon army and navy contracts and certain public utilities and the stevedores.

This labor is as vital to the success of our armed forces as are the soldiers and sailors.

War is not waged by men in uniform alone. They can do nothing unless backed by civilian labor.

Therefore, I regard this labor as an integral part of our team and I wish to take this opportunity of paying great tribute to the men and women who are working so cheerfully and so helpfully upon all of our projects.

Justice For Labor

Labor can rest assured that the military authorities are just as much interested in their welfare and in seeing that justice is done them as they are in the welfare of the soldiers and sailors.

Petitioner's Exhibit X-4—(Continued)

It was because of this great cooperative spirit existing among the people of the islands, coupled with the seizure of the offensive in the Pacific by our armed forces, that I feel justified in easing up on the hardships of the blackout.

* * *

I feel confident that together we can work out this problem so that life will be more pleasant and more bearable without relaxing in any degree our alertness and the regulations for our security.

But we must all work together. As I have said before, one man can do very little, but together we can do a lot.

Contribution to Defense

In this connection I should like to leave the thought that whatever is done should be viewed as a contribution to our country's defense and not as something done as a favor to institutions called the army or the navy.

Those institutions are YOUR institutions. You PAY for them and they belong to you.

They are composed of your fathers, your sons, and your brothers and you should never refer to them as THE army or THE navy but you should now refer to them as OUR army and OUR navy.

The cooperation which has existed in this community has been splendid—by business, by industry, by professions, and by labor, and with this continued cooperation we can beat the Japanese and save our civilization.

* * *

Petitioner's Exhibit N-4—(Continued)

Americans should be willing to sacrifice for America. We owe so much to our great country, which has been so generous to each and every one of us.

We should be willing to sacrifice to preserve the character of our people and our civilization.

Americans Most Generous

Of all the people that I have seen I say without hesitation that as a nation we are the most generous, the most tolerant, the most understanding, the most unselfish, the most Christian in outlook. Those are our good qualities.

But we have some very poor qualities which I am afraid have already done us harm and will do us greater harm in the future unless we correct them.

As a race we are naive, a little gullible, and we do not think far enough in the future.

Life has been good and kind to us and we have not been forced to give too much attention to the destiny of our country.

The experiences, however, which our men are having in this war should be a liberal education and at the same time a sobering influence. They are living in an atmosphere of morality and moral principles, and I hope that their experience will cause them to reaffirm their faith.

When the war is over I hope that we can utilize the army as a great school of citizenship. You can call it universal military training, if you wish, but my idea goes beyond the purely military develop-

Petitioner's Exhibit N-4—(Continued)

ment and encompasses a field in which our men giving a year's service in the army are taught the history of our country and the best means of preserving our democratic principles.

There is no militarism whatsoever in the American army and I hope that there never will be.

We must study our problem and be ready and devolve a plan not for today but for the next generation.

Star-Bulletin

[Endorsed]: Filed 4-6-44.

PETITIONER'S EXHIBIT N-5

Gen. Richardson To Take Command Here

—

Replaces Gen. Emmons Who Goes to Duty At Another Post

—

[Stamped]: May 27 1943

[Marginal note]: Star-Bulletin

At his final press conference in the "little White House" in Iolani palace grounds this afternoon, Lt. Gen. Delos C. Emmons, commanding the Hawaiian department and military governor, announced he is leaving for a new command.

As his successor, he announced Maj. Gen. Robert C. Richardson Jr., who will take over in a few days.

Gen. Emmons said he has "a slight idea where his

new command will be but that it is confidential at the moment."

Gen. Richardson attended the conference and was introduced to correspondent Maj. Harry Albright of the Hawaiian department public relations office.

In opening the conference, Gen. Emmons said:

"I wish to thank members of the press for their sympathy, cooperation and understanding during my stay in Hawaii.

"Then I want to introduce my successor, Gen. Richardson, and I want him introduced personally to all the correspondents present. He will take over in a few days.

"I have an aloha message for all of you," he said.

Aloha Message

His aloha message follows:

"People of Hawaii: Seventeen months have now passed since that fateful day in December, 1941, when war came suddenly to our country in direct violation of the protestations of the attacker.

"On December 17, 1941, by direction of the President, I arrived and assumed command of the Hawaiian department, and became the military governor of the territory.

"It is now with sincere regret that I announce my departure from Hawaii to another area, the location of which I may not as yet disclose.

"My tour of duty has given me the privilege of leading troops of all arms and of associating on an intimate basis with many officers and men of the navy and the marine corps.

Pleasant Experience

"As the executive head of the government under martial rule, I have dealt with many hundreds of civilians of all classes.

"Viewing the past year and a half in retrospect, it is the most pleasant experience I have ever had.

"Many factors have contributed to that result, but mention may be made of only a few in particular.

"The officers and men of the Hawaiian department are entitled and have my sincere appreciation and gratitude.

"They have given me their loyal support and untiring efforts and their consistent cooperation.

"I know that by reason of their training, physical fitness, equipment and fine leadership they are ready to fight as ably and courageously as any similar group in our army.

Thanks to Navy

"The great naval installations on Oahu required the presence here of a large contingent of naval, marine and coast guard personnel."

"I desire publicly to express to Admiral Nimitz and to the splendid officers and men of the navy and its allied services my thanks for their assistance and cooperation during the period of military rule in the territory.

"Our sister service in this war as always is proving itself worthy of leave taking the tremendous it.

"I can not overlook at this time of all the fine

tradition peculiar to amount of work which has been done by the women of this community in the past 17 months.

Praise for Women

"Many hundreds of women have done emergency work—oftentimes difficult and strenuous—to provide needed hospital facilities, office assistance, clerical work and recreation, for the members of the armed forces.

"These women have earned the gratitude of the men who have benefited by their generous and willing efforts.

"The task of building fortifications, airfields, roads and military installations has been immense.

"We asked and received the services of thousands of men, in-

"Our sister service in this war as always is proving itself worthy of leave taking the tremendous it.

"I can not overlook at this time of all the fine tradition peculiar to amount of work which has been done by the women of this community in the past 17 months.

Praise for Women

"Many hundreds of women have done emergency work—oftentimes difficult and strenuous—to provide needed hospital facilities—office assistance, clerical work and recreation, for the members of the armed forces.

"These women have earned the gratitude of the men who have benefited by their generous and willing efforts.

"The task of building fortifications, airfields, roads and military installations has been immense.

"We asked and received the services of thousands of men, including those essential to plantation operation, to do these jobs.

"Speed was one of the prime essentials in order to attain a reasonable military security for the islands at the earliest possible date.

"Civilian war workers have completed many of their projects ahead of schedule.

In Splendid Fashion

"In giving you my aloha may I say that you have conducted yourselves in this emergency in our country's life in a splendid fashion.

"My task was a difficult one in many ways. It would have been doubly so had it not been for the wholehearted support and cooperation of former Governor Poindexter, Governor Stainback and all of the federal and civil officials and the public as a whole.

"The people of Hawaii have set an example for the nation to follow. To them I express my deep appreciation for their confidence and the hope that I have not failed them.

"I wish for you all—soldiers, sailors, marines and civilians—the best of everything in life.

"May the time soon come when these delightful islands may once more enjoy a peaceful routine of life, undisturbed by the threat of aggression from a ruthless, lawless and godless enemy."

In the transfer to new duties, it is believed here that the outstanding record that Gen. Emmons has made as commanding officer of the Hawaiian department is recognized.

It is indicated also that the special work of preparing Hawaii against imminent danger of attack, on which the selection of Gen. Emmons was partly made just after the "blitz" of December 7, 1941, has been largely completed.

West Point Graduate

Gen. Richardson was born October 27, 1882, in Charleston, S. C. He is now 61 years old.

He attended the College of Charleston from 1898 to 1900. In 1904 he was graduated with a B.S. degree from West Point.

In 1905 he saw action as a lieutenant against the Moros in the Philippines. He was given the Silver Star decoration for gallantry in the campaign.

From 1906 to 1911 he was an assistant instructor in modern languages at West Point.

He left the academy for duty with the 23rd infantry regiment in Texas until 1914. He returned to West Point to become an assistant professor in English from 1914 to 1916.

In 1916 he married Lois Elbertine Farman. They have a son, Robert Charlwood III.

During World War I he served as a liaison officer in the AEF and held the rank of lieutenant colonel. As a result of this, he was awarded the Distinguished Service Medal for notable military attainments with the AEF in France.

Attended Peace Parley

After the war he was with the 3rd army of occupation at Coblenz, Germany. He was on the reparations board in France and attended the peace commission in Paris.

Gen. Richardson was graduated from the French war college and was appointed military attache at the U. S. embassy in Rome, where he became acquainted with Mussolini.

He has held many important army posts in his military career. He was commandant at West Point, commander of the 5th cavalry at Ft. Clark, Tex., commander of the 1st cavalry division at Ft. Bliss, Tex., commander of the cavalry school at Ft. Riley, Kan., and, in 1941, he was director of the public relations bureau of the war department.

Many Decorations

Gen. Richardson has been awarded the following decorations:

Distinguished Service medal, Allies victory medal with three stars, Purple Heart, Silver Star (U.S.); Croix de Guerre with palm, Officer Legion of Honor (France); Order of Leopold, (Belgium); Officer Order of St. Mauritzio and St. Lazarus (Italy); and Officer La Solidaridad (Panama).

Gen. Richardson also wrote a book, West Point—An intimate Picture of the National Academy.

He is a member of the Ends of the Earth club, New York; Army and Navy club, Washington and Manila, and the Army & Navy Country club, Arlington, Va.

He is a member of the Episcopal church.

From West Virginia

Gen. Emmons was born January 17, 1888, in Huntington, W. Va.

Upon graduation from West Point in 1908 he was appointed a second lieutenant of infantry.

His services prior to the World war included duty with the infantry troops at the Presidio, San Francisco, Cal.; at Ft. Gibbon, Alaska; at Plattsburg barracks, N. Y., and on the Mexican border during frontier disturbances of 1916-17.

Shortly after the entrance of the United States into the World war, he was detailed with the aviation

[Endorsed]: Filed 4-6-44.

PETITIONER'S EXHIBIT N-6

Frank Knox Calls Japanese Cowards

Chicago, April 1 (UP) — Secretary of Navy Frank Knox Friday called the Japanese cowards, saying that "we now go where we please in the Pacific and dare the enemy to come out and fight."

Referring to the attack on the Palau Islands as an example of how the Navy has seized the initiative in the Pacific, Knox said:

"We were out there challenging the Jap navy to come out and fight. And what did they do? Those ships which were in the vicinity turned and ran away."

Addressing a meeting of businessmen, Knox revealed that "more than 50 aircraft carriers now are plowing the Pacific waters in search of the enemy.

[Marginal note]: Advertiser 4-2-44

[Endorsed]: Filed 4-6-44.

Mr. Anthony: Mr. Marshal, will you please call Mr. Melville. [461]

DAVID G. MELVILLE,

a witness in behalf of the Petitioner, being duly sworn, testified as follows:

Direct Examination

By Mr. Anthony:

Q. What is your name?

A. David G. Melville.

Q. What is your occupation?

A. Quarterman shipfitter, Pearl Harbor.

Q. How long have you held that position?

A. Since March, 1942.

Q. How long have you worked down there at the Navy Yard? A. Since——

Q. Approximately?

A. Since the first of May, 1934.

Q. Did you work there continually?

A. With exception of six months when there was lack of work.

(Testimony of David G. Melville.)

Q. You are from the mainland, are you, Mr. Melville? A. Yes, sir.

Q. What state? A. Massachusetts.

Q. Born in Massachusetts?

A. Born in Rhode Island, westerly Rhode Island.

Q. Mr. Melville, you work on the graveyard shift there in the yard? A. Yes, sir.

Q. Do you know Duncan here in the Courtroom?

[462]

A. Yes, sir.

Q. Is he one of your men?

A. Yes, he works under me.

Q. Did you happen to see him on the evening of February 24th before you went to work?

A. Yes, sir.

Q. How did you go to work?

A. In my automobile.

Q. Did you have anybody with you?

A. Yes, sir.

Q. Who was with you?

A. A man by the name of Rhinehart and a man by the name of Mernick.

Q. Will you please tell the Court what you observed on that evening in connection with Mr. Duncan?

Mr. Ennis: If the Court please, I'd like to renew my objection to this line of examination. It is the same objection I made with respect to the witnesses who were attached to the ship; and would

(Testimony of David G. Melville.)

it be satisfactory to your Honor to take it subject to the motion to strike it later?

The Court: Well, I can't foresee where we are going, what the idea is, but I will receive it with that provision.

Mr. Ennis: As I take it, your Honor, there is no claim that Mr. Melville's testimony has to be perpetuated now because he is leaving the Territory?

Mr. Anthony: There is no such claim. [463]

Mr. Ennis: But I will take it, subject to objection, if I may.

The Court: All right, with that understanding, it is received.

Q. Did you get the question, now? Tell the Court what you observed on that occasion?

A. Well, going, making the entrance to the Navy Yard, you have to go very slow in driving through there, and if there are several cars ahead of you you just stop and wait. And this night one of the boys in my car said, "Well, there's one of your boys there." I said, "Yes, he must have forgot his badge."

Q. Whom were you referring to?

A. To Duncan.

Q. Where was Duncan?

A. He was standing over on the walk. There's a walk for pedestrians on the righthand side entering the Navy Yard, right next to the lane where the cars go in, I should say 10 to 12 feet away.

Q. Did you stop your car?

(Testimony of David G. Melville.)

A. Yes, sir. I was stopped right there at the time, and while I was stopped the marine pushed Duncan's arm and then Duncan pushed his arm back. And then there was another marine came right up at that time and said, "You're under arrest." And as soon as he said "You're under arrest," Duncan immediately walked over and sat down on the bench.

Q. Did you see anybody strike anybody else at that time?

A. No, sir, I saw no blows whatever.

Q. Did you see anybody kick anybody? [464]

A. No, sir, I did not.

Q. Were you close to the scene of this incident?

A. Yes, sir, as I say, within 10 or 12 feet.

Q. How long were you there?

A. Oh, three or four minutes, because there was some kind of a hold-up there ahead of us—I don't know just what it was.

Q. Were there a number of marines there at that time?

A. From six to eight. There always is around there as you enter the yard, there's marines—well, I think there's four passageways there, but at night they only open two, and there's marines on the other side for the cars to come to town, coming through the gate; there's a marine stationed there, and a marine here to check the cars of persons going, entering into the area.

Q. Did Duncan have his badge on when you saw him?

(Testimony of David G. Melville.)

A. I couldn't say anything about that, sir.

Q. But he was standing up on this walk?

A. Yes, sir.

Q. And you're quite sure that no blows were struck while you were there?

A. No, sir, there were no blows struck while I was there.

Q. Did either marine or Duncan look as though they had been in a fight?

A. No. As I say, the first thing that entered my mind was that he had forgotten his badge, and I was going to find a parking space to see if I could identify him. That was my first thought. And after they placed him under arrest and he had taken his place [465] on the seat, I thought I might as well go along to the shop.

Mr. Anthony: That's all.

Cross-Examination

By Mr. Ennis:

Q. Was Duncan talking to the marines when you first saw him?

A. Yes, there was some kind of an argument there. I won't say just what it was.

Q. And the argument apparently had been going on when you first noticed it? A. That's right.

Q. So, of course, you don't know whether there was any struggle or any blows struck?

A. No, sir, not while I was there, there was none.

Q. How far away were you?

(Testimony of David G. Melville.)

A. From around 10 or 12 feet.

Q. You were sitting in your car?

A. Yes, sir, with the windows all open.

Mr. Ennis: That's all. Thank you.

Mr. Anthony: Thank you, Mr. Melville.

(Witness excused.)

Mr. Anthony: If the Court please, at this time I am prepared to rest, with the exception that I would like to state to the Court that Mr. Ennis and myself have arranged that, if it is convenient to the Court, Governor Stainback testify tomorrow morning at nine o'clock. I would also like to have the opportunity to review and [466] tend again to your Honor some of these clippings which thus far Counsel has objected to. With that statement, I am prepared to close my case now, if I may have that permission. And also I would like it understood that we would still like the information from the Court's direct request, in regard to the date when the last attack on shipping between here and the coast occurred, if that can be disclosed.

Mr. Ennis: If the Court please, we are taking up the last item with the military authorities.

The Court: Well, if it is claimed that there is any reason why that shouldn't be disclosed——

Mr. Ennis: We will advise your Honor. And if it is agreeable to your Honor, subject to the two matters on which the Petitioner wishes to proceed—the newspaper clippings and the Governor's testimony—why we'd be prepared to go on now, your Honor, with the Respondent's testimony. We have

some witnesses here. We might be able to dispose of them quickly.

The Court: Could you give the Court any estimate, rough or otherwise, as to about how much time your case will require?

Mr. Ennis: Well, if your Honor please—pardon me for just a minute, I think I can.

The Court: Yes.

Mr. Ennis: Is it your Honor's practice to hold Court on Saturday?

The Court: Well, I have already set a case for this coming Saturday. Yes, it has been the practice here, at least since the [467] beginning of the war, not to differentiate between Saturdays and other days of the week.

Mr. Ennis: Well, if Saturday is already occupied——

The Court: Yes.

Mr. Ennis: ——I would say that the Government would finish Monday.

The Court: The principal reason why I am making the inquiry is on account of the reporter's service. That problem is with us all the time. We just had a Grand Jury report and there were a number of indictments made, and there is the matter of setting the arraignments Normally it would be either Saturday or Monday. And I was wondering if we would likely get through with this case this week as to the taking of evidence at least. I could arrange to put over the case that is set for Saturday if there was a fair chance of getting through by this week working in the forenoon only.

Tomorrow afternoon I have another matter, so that I can't hold over the session conveniently tomorrow, but I could Saturday morning.

Mr. Ennis: If the Court please, the witness or two which the Government has, we will not be able to get them on Saturday. It would be physically impossible. But we would be willing to go through tomorrow if we might then finish up on Monday.

The Court: I can put the arraignments over until Tuesday if I know in advance and sufficient reasonable time is given so as to give adequate notice to the persons concerned. If you could bring your witnesses Monday, we would then finish the matter of taking evidence. [468]

Mr. Ennis: Oh, yes, we could finish taking evidence.

The Court: Then we could have arraignments set for Tuesday. They have already been set for Monday morning at 10 o'clock, but I could have them postponed one day more. If there is to be a postponement there, I would like to know it now so that I could get early notice to them and to their attorneys.

Mr. Ennis: Well, in order that your Honor's calendar might not be disturbed, it might be safer for us to go on tomorrow and then go over until Tuesday to be sure.

The Court: Well, if that's agreeable to you gentlemen and Counsel for the Petitioner.

Mr. Anthony: Whatever is agreeable to the Government and to the Court.

The Court: All right, then. Do you want to put a witness on now?

Mr. Ennis: Yes.

The Court: All right, call the witness. Following these other exhbits of a similar general nature, it seems to me to be timely to offer yours, but I don't make any special point of that. I'm speaking about these newspaper clippings. However, that's up to you to select the time for them.

ALICE CAMPBELL THOMPSON,

a witness in behalf of the Respondent, being duly sworn, testified as follows:

Direct Examination

By Mr. Ennis:

Q. Mrs. Thompson, will you state your full name and your [469] present occupation?

A. Alice Campbell Thompson. I am now recorder in the Provost Court at the Pearl Harbor Navy Yard.

Q. What are your duties as recorder?

A. Taking down in shorthand and transcribing the testimony of every trial that's taken there.

Q. How long have you occupied that position?

A. Since October 27, 1943.

Q. Do you do that work every working day?

A. Yes.

Q. For several hours?

A. Yes, as long as Court lasts.

(Testimony of Alice Campbell Thompson.)

Q. You are a legal stenographer also?

A. Yes, I am.

Q. How long have you been in that work?

A. Why, I was employed by the law firm of Postal & Peters in Columbus, Ohio. I started in their employ in September, 1933, and I worked there continually since that time until the middle part of May, 1943.

Q. And then what employment did you take up?

A. And then I left to come over here, and I came over under a war service contract in the Navy and started to work for the Navy.

Q. And what position did you occupy before you became the recorder of the Provost Court last October?

A. I was Secretary to Lieutenant Ridley in the Discipline [470] Section of the Navy Yard.

Q. Were you recorder at the Provost Court at Pearl Harbor on the dates of March 1st and March 2nd, 1944? A. Yes, I was.

Q. Did the Petitioner, the boy Duncan, appear before the Provost Court on those two days?

A. Yes, he did.

Q. Did you make shorthand notes of the testimony on those two days? A. Yes, I did.

Q. Did you transcribe the testimony on the first day? A. No, I didn't transcribe that.

Q. Have you got the notes of that testimony with you? A. Yes, I have.

Q. Will you read your notes of that testimony?

A. This case is 650-44. "Are you Lloyd Clifford

(Testimony of Alice Campbell Thompson.)

Duncan? Answer. Yes, sir." And then he was arraigned by the Prosecutor.

Mr. Anthony: Was that you reading from your notes?

The Witness: Well, the witness was duly arraigned.

Mr. Ennis: Just read your notes.

Mr. Anthony: Sorry, I can't hear the witness.

Mr. Ennis: Speak loudly, Mrs. Thompson, and at first just read your notes, and if we want to ask you anything else about what happened, I'll ask you separately.

"Q. Do you understand the nature of the charge?

"A. Yes, I do. [471]

"Q. How do you plead, guilty or not guilty?

"A. Not guilty.

"Q. Have you any other witnesses?" This is the Court.

"A. Two mainland friends of mine. Their ship has left now."

Mr. Anthony: Just a minute. The witness said, "This is the Court." Does that appear in your notes?

The Witness: Well, I have the Court noted, that the Court is speaking.

Mr. Anthony: I'm sorry.

The Witness: (Continuing):

"Q. You have the right to be represented by an Attorney if you wish.

"A. I don't think I need an Attorney.

"Q. Are you ready to proceed at this time?

(Testimony of Alice Campbell Thompson.)

"A. I am.

"The two witnesses for the Prosecution were not present, so the case was continued until March 2nd, 1944, at 8:30."

That's all.

By Mr. Ennis:

Q. Did you also take the testimony of the hearing on the following day, March 2nd, 1944?

A. Yes.

Mr. Ennis: May I have that marked as Government's Exhibit 1 for identification? [472]

Q. I show you Respondent's Exhibit No. 1 for identification, dated March 2, 1944. (Showing witness a typewritten document) Have you seen it before?

A. Well, this is the copy that I typed from my notes.

Q. Is this the original, the original copy or the original which you transcribed from your notes of the hearing on March 2, 1944? A. Yes.

Q. Will you examine it and examine your notes? You have your notes for that day with you?

A. Yes.

Q. And examine this transcript which is the original typed from the notes, and tell the Court whether or not it is a correct transcript of your notes?

A. Do you mean to compare everything?

Q. Well, have you compared it before?

A. Yes, I have.

Q. You have compared it? A. Yes.

(Testimony of Alice Campbell Thompson.)

Q. And is it a correct transcript of your notes?

A. This is a true and accurate transcript of my shorthand notes from the beginning of the trial until the finish.

Mr. Anthony: May I have that last answer?

(The Reporter read the last answer.) [473]

Q. Did you take down in your notes and did you transcribe into Exhibit 1 all that was said by the witnesses and by the Petitioner during the trial on March 2nd? A. Yes, I did.

Q. And it all appears here? A. Yes.

Mr. Ennis: I offer Respondent's Exhibit No. 1 for identification in evidence.

Mr. Anthony: No objection, your Honor.

The Court: Let it be marked for identification.

The Clerk: Admitted in evidence.

The Court: No, marked for identification.

(Received and marked Respondent's Exhibit "No. 1" for identification.)

Mr. Ennis: That's all, Mrs. Thompson.

Cross-Examination

By Mr. Anthony:

Q. Mrs. Thompson, at the beginning of a hearing in the Provost Court, what happens? Just tell the Court what happens? How do you take your place? Just how does it work?

A. Well, the Judge enters the Courtroom first, and then I usually go after him, and the Prosecutor and the Clerk come in, and the Bailiff tells the Court to rise.

(Testimony of Alice Campbell Thompson.)

Q. I'm sorry, you're going to have to speak louder.

A. The Bailiff then asks the Court to rise, and they all stand, and when we get to our places, why he says "Be seated", and [474] we all sit down.

Q. Do you stand, too?

A. Yes, until he says "Be seated."

Q. And then what happens?

A. And then the Prosecutor goes on with the cases.

Q. What's the first thing that is said after the Judge sits down on the bench?

A. Why there isn't—he doesn't say anything. The Prosecutor just goes ahead with the cases and offers the cases and gives them to the Bailiff to call out.

Q. Now, I want the first thing that happens. Now, you've got a case for trial. What's the first thing that happens when the trial begins. Everybody is seated and have been given the order to sit down. Now what happens?

A. Well, the Prosecutor asks the Judge if he is ready to proceed.

Q. Does he stand up and ask the Judge that?

A. Yes, he is standing all the time.

Q. The Prosecutor asks the Judge What?

A. That he is ready to proceed with the cases.

Q. What does the Judge do?

A. He says, "We are ready."

Q. Then what happens?

A. Then the Prosecutor goes on with the cases

(Testimony of Alice Campbell Thompson.)

and he gives them to the Bailiff, and the Bailiff calls out the cases in their order, and we have each one in order. [475]

Q. Now, turn to your March 1st notes, will you please? What's the first thing that you have there?

A. Well, this wasn't the first case that was called that day. This is case No. 650.

Q. What's the first thing that you have there on that day?

A. Well, the first thing that I have is the number of the case.

The Court: What?

A. You mean the previous cases?

Q. Yes, after you got into the Courtroom, the first note that you took down after you got into the Courtroom?

A. Why, I don't take any notes until the defendants are called up before the Judge, and then when the Prosecutor begins why I take down everything from there on.

Q. You don't take anything like the calling of the case or conversation that goes on before the case is called or tried?

A. No, not until the defendant is called before the Judge, and then the Prosecutor begins and then I start taking down from there on.

Q. I see. Let's read, let's hear what you have about these other cases that were tried on that day.

A. Why, I have, the first case was No. 649.

Q. Read it.

A. "Are you Richard Cho? The Witness an-

(Testimony of Alice Campbell Thompson.)

swers. Case No. 649-44." And I have in my notes——

Q. Start from the beginning. I didn't hear your first [476] statement.

A. The first case was 649-44. And, "Are you Richard Cho?" "Witness duly arraigned."

Q. What do you mean by that? Who said that?

A. I don't take down the charge when the Prosecutor reads it. I just put down he was duly arraigned.

Q. I see. All right.

A. And then, "Do you understand the nature of the charge?" "Yes, sir." "How do you plead, guilty or not guilty?" "Guilty."

Q. Is that all you have? What happened to him?

A. This—well, I don't take down any notes if a defendant pleads guilty. I don't have to.

Q. What else have you got on that day?

A. I have what he was given, the fine that he was given.

Q. Well, what I'm asking you is to read from that notebook on that day what you have.

A. Then I have another number.

Q. No, I mean the one right following this Chinaman. A. This is it.

Q. All right.

A. "P.H. No. 646-44." This is Bellino. The Prosecutor reads the charge to him. He said, "Do you understand the nature of the charge?" And he said, "Yes." "How do you plead, guilty or not guilty?" "Guilty."

(Testimony of Alice Campbell Thompson.)

Q. What else do you have there?

A. And that's all I have. [477]

Q. All right, what the next case?

A. The next case was Duncan, No. 650.

Q. Start in with the beginning of that. What does that say?

A. "Q. Are you Lloyd Clifford Duncan?

"A. Yes, sir." —Then I have

"Witness duly arraigned."

"Q. Do you understand the nature of the charge?

"A. Yes, I do.

"Q. How do you plead to this charge, guilty or not guilty? "A. Not guilty.

"Q. Have you any witnesses?" This is the Judge Speaking.

"A. Two mainland friends of mine. Their ship has left now.

"Q. You have the right to be represented by an Attorney.

"A. I don't need an Attorney.

"Q. Are you ready to proceed at this time?

"A. I am."

Q. That was on March 1st? A. Yes.

Q. What else do you have?

A. And then I have just made a notation here that the two witnesses for the Prosecution were not present; the case was continued until March 2, 1944, at 8:30.

Q. Wasn't anything said by anybody there about that at all— [478] the Judge or the Prosecutor said nothing at all on the first day?

(Testimony of Alice Campbell Thompson.)

A. Well, that's all that I took down.

Q. He did say something?

A. I couldn't say. I don't remember.

Q. It seems a little strange that you're trying a case and you've got the Judge and Prosecutor and the Defendant, and neither the Judge nor the Prosecutor said anything on the day of the trial, doesn't it?

A. Well, there was a discussion of whether the Prosecution's witnesses were there, and they were not there, so the Judge said "This case is continued until March 2nd."

Q. But you didn't put that in your notes?

A. Well, I just made a notation of that.

Q. Now, turn to your notes of March 2nd. How did the opening gun start there on that day? What was the first case?

A. Well, I didn't make a notation of the dates. I couldn't tell you just what cases we had previous to that.

Mr. Anthony: Read the answer, please, Mr. Reporter.

(The Reporter read the last answer.)

Q. How many cases did you try the day you tried Duncan?

A. We had two one continued case and one case, No. 652, by the name of Vandermar, the defendant.

Q. You were there the whole day of that session, weren't you, the whole morning?

A. Yes, yes, I was.

Q. What time did you start in? [479]

(Testimony of Alice Campbell Thompson.)

A. At 8:30.

Q. What time was it over?

A. I don't remember.

Q. I can't hear you.

A. I don't remember.

Q. You have no idea when it was over?

A. No, I didn't make a notation of that.

Q. What's the first case that was tried on that day?

A. Well, the first case that I have is a case of——

Q. That isn't what I asked you. What's the first case that was tried that day?

A. Well, as I said, I didn't—the first case that I have in this notebook is the case No. 648 of Gonzales.

Q. What do you have about that?

A. This case is continued from another book.

Q. Well, can you read what you've got about it?

A. "A $10.00 fine."

Q. Is that all you have, "A $10.00 fine"?

A. Yes.

Q. And the number of the case?

A. Yes, it's continued from another book, and I don't have it.

Q. What's the next case after a $10.00 fine?

A. The next case is No. 652 of Vandermar.

Q. Of what?

A. By the name of Vandermar, the defendant.

[480]

Q. Let's hear what you have about that?

A. After the defendant was duly arraigned:

(Testimony of Alice Campbell Thompson.)

"Q. Do you understand the nature of the charge? "A. I do.

"Q. How do you plead to this charge, guilty or not guilty? "A. Guilty."

Q. Anything else?

A. That's all. And then I have the fine that he was given.

Q. Well, read what you've got?

A. "A $5.00 fine."

Q. What the next case that you've got?

A. The next case is the case of Duncan.

Q. Well, it's been testified in this Court that there were three cases tried before Duncan was tried on March 2nd. You have no record of that?

A. Well, there may have been. I don't have that notebook with me. I'm beginning with the continued case in here.

Q. You've got the notebook with you that's supposed to contain notes of what took place on March 2nd, have you not?

A. I have the notebook of the trial of Lloyd Clifford Duncan. I didn't think you wanted——

Q. Did you need a special book for Duncan?

A. No, this is just a continued book.

Q. Well, these other cases that you tried, where would they be, in what book, on that same day?

[481]

A. Well, they are in a book that I have in my files.

Q. How many books do you use at a time?

A. Well, it all depends on the length of the tes-

(Testimony of Alice Campbell Thompson.)

timony how many books I use. Sometimes I don't use a full book and sometimes I do, and sometimes I use two books.

Q. Yes, but you've got the first case that was tried when you opened up Court and you've got a reference to a $10.00 fine and you've got Duncan, all in one.

A. No, there's another case before that, the case of Vandermar.

Q. Well, let's hear what you have about that?

A. Well, I just read that to you.

Q. Yes, you've got two matters.

A. That's all I have in this book.

Q. Well, now, what happened to the others?

A. Well, I couldn't tell you. I'd have to get my notes on that.

Q. I see. Do you know whether or not there are any oaths administered when they try these cases there in the Provost Court? I don't mean profanity. Are the witnesses sworn?

A. No, each witness is arraigned.

Q. Just arraigned but not sworn? You never take down what the Prosecutor says in arraigning them? A. I don't take the charge down, no.

Q. You don't take down any conversation between the Judge and the Prosecutor or the Defendant and the Judge until you get down to the actual event itself, to the actual trial? Isn't it fair to [482] say that what you try to do is to take down a brief synopsis of what took place?

A. No, I take down the actual testimony at a trial.

(Testimony of Alice Campbell Thompson.)

Q. How many words can you take a minute?

A. Well, I passed tests—a hun——

Q. Two hundred fifty a minute?

A. Well, I won't say that, but I know I can do it. I've done it.

Q. You have taken a test in which *you* grade has been more than that or at least that?

A. No, I have never taken a test, no.

Q. You have never worked as a court reporter?

A. No, I have never done court reporting before.

Q. I want to be perfectly fair with you. Do you pose yourself out as a court reporter?

A. Well, I have satisfied the people out there with my work.

Q. No, I'm talking about court reporting—an ordinary civilian court.

A. Yes, I can take testimony at a trial that we have down there.

Q. The trials that you have down there in Provost Courts? A. Yes.

Q. But do you think you can do the work in a court of record?

A. Well, I'd have to be given a trial first.

Q. Have you ever taken any tests for speed?

A. No, I haven't. I've taken testimony of courts and boards [483] in the yard. I took a diving case and I took a suicide case. They don't know whether it was suicide or murder. And I took that. And that was transcribed to the approval of all the men in charge.

(Testimony of Alice Campbell Thompson.)

Q. Is it your regular practice to transcribe your notes in Provost Court cases?

A. When I am asked to, I do.

Q. I asked you if that is your regular practice to transcribe the notes?

A. I don't transcribe the notes until I am asked to transcribe them.

Q. In other words, it is something unusual that you should transcribe notes in a Provost Court case?

A. Yes, and I have done that.

Mr. Anthony: That's all.

By the Court:

Q. What system of shorthand do you use?

A. I use Pitman.

Q. Where does the Duncan case begin? (Referring to notebook)

A. At the top of the page.

Q. What's that? (Indicating)

A. That's those cases that I just read, the previous cases.

Q. Where does this end—your notes here on the Duncan case?

A. On the Duncan case, there. (Indicating in notebook)

Q. Is that the next case following? (Indicating)

A. Yes.

Q. Where do you put your dates? [484]

A. I didn't put the date on that. The date is always on the charge, and sometimes I omit doing that.

(Testimony of Alice Campbell Thompson.)

The Court: Is it proposed to put the original notebook in evidence?

Mr. Ennis: Well, your Honor, I did offer the transcript from the notes in evidence for the record. Did your Honor receive the transcript in evidence?

The Court: I don't believe that was passed on. It was subject to an examination as to qualifications, but in only for identification first. I don't think it was offered in evidence yet.

Mr. Ennis: Well, my recollection was that I did, and in order to make it clear, your Honor, I do offer the transcript in evidence. I will also offer the notes of the March 1st and March 2nd hearing in evidence.

The Court: The transcript is received in evidence as Respondent's Exhibit No. 1. Is that your first one?

Mr. Ennis: Yes. And the notes from which the transcript, as testified, has been made, is Exhibit 2.

(Respondent's Exhibits "No. 1" and "No. 2" were received in evidence.)

[Printer's Note: Respondent's Exhibit No. 1 is Set out in full as Exhibit Q to Return and Answer to Order to Show Cause, at page 367 of this printed record.]

The Court: Are you through with your witness?

Mr. Ennis: No, your Honor. I also offer in evidence the notes of the March 1st hearing which the witness read into the record.

The Court: Oh, yes.

(Testimony of Alice Campbell Thompson.)

The Witness: This is the one the arraignment is in. (Indicating) [485]

The Court: The first one here?

The Witness: No, this is the arraignment. I can show it to you. This one right here. (Indicating in notebook.)

The Court: Exhibits 2 and 3 received in evidence.

(Respondent's Exhibit "No. 3" was received in evidence.)

The Court: I think that's all.

Mr. Anthony: How long did it take to try Duncan?

The Witness: I don't remember.

Mr. Anthony: That's all.

Mr. Ennis: That's all. Thank you, Mrs. Thompson.

(Witness excused.)

ROBERT C. BOWERMAN, Corporal, U.S.M.C., a witness in behalf of the Respondent, being duly sworn, testified as follows:

Direct Examination

By Mr. Ennis:

Q. Will you state your full name and present occupation?

A. Robert Carl Bowerman, Corporal, U.S.M.C.

Q. What are your present duties?

(Testimony of Robert C. Bowerman.)

A. I'm in the main gate detachment at Pearl Harbor.

Q. What are your duties there?

A. I'm the Corporal of the Guard, sir. My duties are Corporal of the Guard at the main gate and the gates of the Navy Yard.

Q. What do you do as Corporal of the Guard?

[486]

A. Well, I'm in charge of my men in the inner section and make sure that they carry out their duties that they are supposed to, correct them if anything is wrong.

Q. What are their duties?

A. Checking identifications going into the Navy Yard and carry on all the orders, make sure that nothing is stolen from the Navy Yard, no disurbances whatsoever; no liquor, ~~cameras, firearms,~~ unauthorized firearms are allowed in the Navy Yard.

Q. Is it their duty under supervision to keep order at the gate? A. Yes, sir.

Q. I show you Respondent's Exhibit No. 1 in evidence and I direct your attention to that part of the exhibit which purports to be a transcript of your testimony at the Provost Court trial of the Petitioner on March 2, 1944. You did testify at that time? A. Yes, sir.

Q. Will you take your time and read your testimony and tell the Court whether that is a correct transcript of the questions you were asked and the answers you made, as you remember them? (Handing witness a transcript.) Just take your time.

(Testimony of Robert C. Bowerman.)

(Witness examines transcript.)

Q. Have you read all of your testimony, Corporal? A. Yes, sir.

Q. Does Respondent's Exhibit No. 1 contain a correct transcript of all of your testimony?

A. Yes, sir. [487]

Q. Did you give any testimony which is not contained in the transcript? A. No, sir.

Q. Do you recall the Petitioner's testimony on that occasion, Duncan's testimony?

A. Yes, sir. No, I don't remember word for word, sir.

Q. No, I don't suppose you would, but will you read here the transcript of Duncan's testimony and will you state to the Court whether this is a correct transcript of his testimony as you recall it? It begins here. (Indicating.)

Counsel will stipulate, your Honor, that Government's Exhibit 1, the original of the transcript of the testimony, is the same as the copy annexed as an exhibit to the response and answer and is the same as the copy upon which the Petitioner was cross-examined yesterday.

Mr. Anthony: That is correct, your Honor. If I discover any errors I will direct them to the Court's attention.

The Court: Well, for the Court's information, has that been prepared and checked by you?

Mr. Ennis: Yes, your Honor, we have done so.

The Court: All right.

(Testimony of Robert C. Bowerman.)

Q. You have read the Petitioner's testimony?

A. Yes, sir.

Q. Is that, according to your best recollection, a correct record of his testimony? A. Yes, sir.

Q. Does it, according to your best recollection, contain [488] all the testimony that he gave at that time? A. Yes, sir.

Mr. Ennis: Now, if the Court please, subject to use only, if the Court does not strike out the testimony of Petitioner and Petitioner's witnesses about the actual occurrences at the gate, I would like to question Corporal Bowerman on that subject; but, of course, it would not stay in the record if your Honor strikes out the other testimony, but if the other testimony is in, I would like his version of that unhappy event also in the record.

Mr. Anthony: You already have that in the transcript, haven't you?

The Court: Well, it not having thus far been settled as to whether the other will stay in or not, you may go ahead under the same terms and conditions as surround the other testimony.

By Mr. Ennis:

Q. Corporal Bowerman, you have testified that this Exhibit No. 1 contains a correct account of the testimony you gave? A. Yes, sir.

Q. Is it also a truthful account of what occurred on the occasion in question at the Pearl Harbor gate? A. Yes, sir.

Q. Were you struck by the Petitioner on that occasion? A. Yes, sir.

(Testimony of Robert C. Bowerman.)

Q. Did you bear any mark as a result of that striking?

A. Yes, sir, my upper lip and my lower lip were cut inside, and I had a cut under my left eye—I was bleeding. [489]

Q. How were those injuries inflicted on you by the Petitioner?

A. I took him over the intersection and sat him down and asked for his badge. He said he wasn't going to give us his badge. You want the words used, the profanity words?

Q. No, that won't be necessary. Is the account that you have stated to the Provost Court trial a correct account of the words he used?

A. Yes, sir.

Q. Well, then, you don't have to repeat them here, but just tell us the action that occurred.

A. I asked for his badge and he wouldn't give it to me, and I reached for it. He was holding on to it, and I tried to take it off his head, and he clipped me one on the mouth.

Q. What with? A. His fist.

Q. Do you remember which arm, which hand?

A. No, sir; I was on his right and I imagine it was on his right arm. He came up pretty fast. I wasn't expecting it. And Hunter tried to pin his arms down so I could take his badge away from him, and he hit me underneath the eye and he was kicking at me all the time he was doing it, both Hunter and I know.

(Testimony of Robert C. Bowerman.)

Q. He was kicking you? A. Yes, sir.

Q. In your opinion were the blows with his hand deliberate?

A. Yes, sir, I don't see how they could be anything else but [490] deliberate.

Q. How much do you weigh, Corporal?

A. One hundred forty-seven pounds, sir.

Q. In your opinion, how much does the Petitioner weigh?

A. I would say about 190-200, somewhere around there.

Q. Was anyone else present besides you when you were struck by the Petitioner?

A. Yes, sir, Pfc. Hunter was.

Q. That's Private Hunter?

A. Private Hunter, yes.

Q. Did you have a discussion with the witness Weities after he came back on the truck?

A. Yes, I did.

Q. What was that discussion?

A. He came back from the truck and walked up and I said, "Well, are you satisfied now that you can't get to the ship through the Navy Yard?" and he said, "Yes." And I noticed he was hugging his arm to a side a little bit, and I looked again and I could see the outline of a bottle there. So I asked him what he had under his coat.

Mr. Anthony: Just a minute. What's the relevance of this?

The Court: It seems corroborative.

Mr. Ennis: We just testified on the subject, and

(Testimony of Robert C. Bowerman.)

I think that the fact that the Petitioner, as witness in his own behalf, admitted they were drinking at the time, that it has some relevance on their credibility and makes better testimony. [491]

Mr. Anthony: I don't see that it has any relevance on their testimony. I don't see the purpose of it. It has nothing to do with the Petitioner.

Mr. Ennis: Well, I submit, your Honor, that the Corporal's account of his conversation with Weites, about which Weites has testified, should be received.

Mr. Anthony: The only reason that came out was on cross-examination, not on direct examination of the witness Weities; Mr. Ennis brought that out, and now he wants to change it, I guess, I don't know.

The Court: Well, I don't see where it is in any manner relevant, but you may go ahead.

By Mr. Ennis:

Q. Will you finish your account of that conversation?

A. I asked what he had under his coat, and he said "Nothing." I told him to lift up his arm, and he lifted up his arm and I could see a bottle and I told him to hand it over. I wrote him a ticket for the bottle and gave it to him. And the bottle—the seal had been broken and about a third of it drank—I wrote that on the ticket. And he asked me and said, "Well, what's the best way to go back to the ship again?" I said, "Take

(Testimony of Robert C. Bowerman.)

the road through the housing there and thumb a ride back to Pearl City." And that's all.

Q. How long have you been Corporal at the main gate? A. Beg pardon, sir?

Q. How long have you been Corporal at the main gate? [492]

A. I imagine around eight months. I've been standing Corporal of the Guard watches up at the gates 16 or 17 month now.

Q. You have? A. Yes, sir.

Mr. Ennis: That's all.

Cross Examination

By Mr. Anthony:

Q. Corporal, on this night in question, how did this argument that you had with Duncan arise?

A. I was sitting behind a desk and Weities asked me the best way to get back to his ship. And so the road that he takes if he was standing where he asked me, he couldn't see it, in view of it being obstructed. So we stepped out about three feet from the desk and I pointed to the road and told him to take this road to the left, to hit the highway, turn to the left, and thumb a ride back to Pearl City. And he said, "Well, I thought I was supposed to take a truck back to the ship." And I said, "The truck only goes to the ships that are tied up in Pearl Harbor itself." And Duncan, I hadn't noticed him before; he was standing about five feet away from me, I believe. I guess he was taking in our whole conversation, and he called me

(Testimony of Robert C. Bowerman.)

a vile name and said I was trying to foul his buddy up.

Q. Just stop right there. You testified down in the Provost Court that it was Duncan that came up to you, do you recall that, and asked for the instructions? [493] A. No, sir.

Q. You didn't say that?

A. Not that I recall, sir.

Q. Are you sure of that?

A. Not that I recall. I won't say I'm sure but I just can't recall it that way.

Q. Well, go on with your story. After that occurred, what happened?

A. Well, I looked at him and I wondered what he was doing butting in. I turned my back on him and tried to explain to Weities again. Duncan wised off again in a pretty loud and unruly manner, and I told him that I'll handle this business—why doesn't he shove off? And he said he doesn't have to shove off, and I was trying to foul his buddy off. And inside the Navy Yard at the time it was pretty busy up there, it was a pretty busy part of the evening, so I walked over to him and I noticed, I could smell the liquor the first thing as I walked up. I don't know whether it was liquor or rum, but I could smell something as soon as I got near him. His badge was flipped over.

Q. He what?

A. I couldn't see the face of his badge. It was hung on a lanyard around his neck, I believe.

(Testimony of Robert C. Bowerman.)

Q. Did you ask him for his badge?

A. I placed him under arrest.

Q. Right away? For what?

A. For using profane language when I told him to shove off [494] and he said he didn't have to shove off.

Q. Is that against the rules of the yard, using profane language?

A. Yes, sir, in an intersection such as that, definitely.

Q. You never used any profane language down that intersection?

A. Not while I was on duty, sir.

Q. Not that night in particular?

A. No, sir.

Q. You are quite sure of that?

A. Yes, sir.

Q. What regulation is that in violation of?

A. Not that I know of, I can't name the violation, sir, but you are not supposed to use profanity in the manner he was using it and in a loud tone like that when there's women present and a lot of high officials. You just don't do it, that's all.

Q. So you put him under arrest for using profanity? A. And interfering with my duties.

Q. In what way did he interfere with your duties?

A. I was trying to tell this seaman how to get back to his ship, and he wouldn't let me explain to this man. He stood there diverting my atten-

(Testimony of Robert C. Bowerman.)

tion, and these other sentries' attention, away from my duties by standing out there using and calling us vile names and telling the seaman that he didn't have to do what I told him to do but to do what he said.

Q. The gist of your complaint was that he was telling the [495] seaman a way to get back to the ship and using profanity, isn't that it?

A. He wasn't telling the seaman, sir. He directed his conversation to me.

Q. Are you sure of that? A. Yes, sir.

Q. You grabbed for his badge?

A. No, sir, I didn't grab for it.

Q. You asked for it, "May I have it, please?"

A. No, not like that, sir, I didn't.

Q. How did it happen?

A. I placed him under arrest. I said, "You are under arrest for using profane language and interfering with my duties; let me see your badge." He just stood there. I reached up to flip it over, and in case he broke arrest I'd have the number of his badge.

Q. And regulations require that you take the badge? A. Yes, sir.

Q. Or just the number?

A. Take the badges themselves, sir.

Q. Well, you in fact got his badge, didn't you?

A. I tried to flip it over and he took a swing at me.

Q. And you pulled it over his head?

A. No, sir.

(Testimony of Robert C. Bowerman.)

Q. How did you get it?

A. After he took a swing at me—he took a swing and missed me—I took him by the arm and to take him off the intersection. [496] There were at least 20 or 30 seamen over there. Some of them had been drinking. A lot of cars were coming in and we don't want any confusion in the intersection to block traffic; cars and people were stopping on the sidewalk, walking in to see what the commotion was about. I wanted to get him off the sidewalk and get him out of the way.

Q. You thought he was a seaman?

A. No, sir; I saw his badge around the neck. I didn't see the face on it. There was a number on it.

Q. Did you hit him at any time?

A. No, sir.

Q. Did you have your club out?

A. No, sir.

Q. You didn't have your club with you at any time? A. No, sir, I didn't have any club.

Q. You didn't go in and get your club?

A. After I had his badge and had laid it on the desk, Duncan sat on the side, and I told Pfc. Hunter to look it over and I was going to have the Civil Service Police pick him up. And Duncan started to call me names, calling us names and threatening to kill us if he ever met us outside. And after being hit in the mouth, my lips were bleeding and everything, I took a club over there and decided I had taken enough beating

(Testimony of Robert C. Bowerman.)

at his hands and I told him to shut up or else I'd have to use the club on him. So he shut up.

Q. Did you give any instructions to any guard out there to [497] plug him if he moved?

A. No, sir.

Q. Are you sure of that? A. No, sir.

Q. You're not sure?

A. I mean, yes, sir, I am sure of it.

Q. Was Duncan marked up by any of your blows?

A. No, sir, not that I know of. I didn't see any marks on him.

Q. You didn't? A. No, sir.

Q. You took him to a dispensary for a sobriety test, did you? A. No, sir, I didn't.

Q. Some other marine did that?

A. No, sir, not that I know of. I turned him over to the Civil Service Police and I believe they took care of him, sir.

Q. I see. Now, at the same time this was happening Private Hunter came along, is that right?

A. He was the sentry on duty there, sir.

Q. Was there any altercation between Duncan and Hunter?

A. He assisted me in seating him down and assisted me in getting his badge away from him.

Q. Did Hunter strike at the defendant?

A. No, sir, not to my knowledge. I didn't strike him, sir.

Q. Did Duncan strike at Hunter?

(Testimony of Robert C. Bowerman.)

A. Yes, sir. I saw Duncan was throwing quite a few fists [498] there, and I saw Hunter go back, his hat fall off, and I heard Hunter yell once, and after it was all over I asked him what he yelled about, and he said Duncan had kicked him in the shins.

Q. Did you ask Duncan whether he was a shipfitter? A. A what, sir?

Q. Did you ask Duncan whether or not he was a shipfitter? A. No, sir.

Q. Are you sure of that? A. Yes, sir.

Q. As I understand it, after you announced that he was under arrest, he was perfectly docile, is that correct? A. No, sir.

Q. He didn't do anything to you after that, did he?

A. After I announced him under arrest, yes, sir. I put him under arrest and asked to see his badge, and he stood there, and I asked to turn his badge over, and he took a swing at me.

Q. You first put him under arrest after talking to his buddy how to get to the boat?

A. No, sir, for interfering with our duty.

Q. Well, that was just talk?

A. Well, it was more than that.

Q. What more than talk had he done when you put him under arrest?

A. Well, there's different ways of talking. If a man was just out there telling a joke, it wasn't bad, but he was using profanity and cussing and stopping traffic. [499]

(Testimony of Robert C. Bowerman.)

Q. Well, where was he standing at that time?

A. Inside the yard, about, oh, I'd say six, seven feet, and he was off the sidewalk about two feet out in the intersection; and about, I'd say, 20 feet space was there for cars and pedestrians to go in, and pedestrians and bicycles to walk out.

Q. Now, Corporal, isn't it a fact that up to the time you put him under arrest, Duncan had done nothing except talk?

A. He was refusing to obey my orders. I told him to shove off and he didn't shove off. He said he didn't have to shove off.

Q. Well, did he have to shove off?

A. Yes, sir, if he was interfering with my duties, and he was interfering with my duties, and large crowds were gathering. We had three men out there—four counting myself—one man was further down checking the bus, so I had two men and myself out there, and we have to check the automobiles coming in, pedestrians coming in, bicycles coming in, and pedestrians going out, and watch these merchant seamen to see that they don't go into the yard unescorted.

Q. Corporal, wasn't it a fact that you were pretty sore at Duncan because he contradicted your instructions, isn't that it? Tell the truth, isn't that the fact, that that made you sore?

A. I can't describe the feeling, sir. It happened. I don't know whether I was peeved or not. I know it shouldn't have been done.

(Testimony of Robert C. Bowerman.)

Q. You were sore about it, weren't you—this fresh guy that was saying something that you knew was wrong? [500]

A. I won't say I was sore about it. I just knew he was wrong, that's all. I told him he was wrong.

Q. It didn't make you sore at all?

A. I don't know what the proper definition of the word means, sir.

Q. You have never been sore?

A. I've been sore, sir, but I don't know where it begins and where it leaves off.

Q. You were going to see to it that Duncan was charged for that incident, the use of profanity and interfering with the instrutcions that you got?

A. Yes, after I told him to shove off and he said he didn't have to shove off, I was.

Q. You pushed him down in his seat?

A. After he took the swing at me, yes, sir. Hunter and I took him by the arm and he was trying to break loose and bucking us and kicking us, so we set him down.

Q. You weren't actually afraid of bodily harm, were you? A. No, sir. I wasn't.

Mr. Anthony: That's all.

Mr. Ennis: That's all. Thank you.

The Court: Just a minute. I didn't get it. Was one of your duties there to direct these merchant seamen as to where they could find their boats, or was that not one of your duties?

The Witness: No, sir. I have never heard an order on that. They know where they are tied up

(Testimony of Robert C. Bowerman.)

when they pull in. We don't know [501] the whereabouts of a ship. If a man comes up and says, "My ship has moved on me," or something, well, then I have to call into the office to my Lieutenant who has a confidential list, and he tells me the ship movement. But usually the people come up and they know where their ships are tied up. And we just said it's tied up at Pearl City, so I told him the easiest way to get there, and that he couldn't go through the yard and explained that the trucks only carry to the ships and that Pearl City wasn't in the Navy Yard.

The Court: Well, that was just voluntary information you were giving him as a matter of courtesy.

The Witness: And if I hadn't given it to him, well, he might tell people and they would stand there and argue with you and get in the way when you're busy like that.

Mr. Ennis: That's all, your Honor.

The Court: That's all.

(Witness excused.)

Mr. Ennis: I would like to offer in evidence at this time, your Honor, as Respondent's Exhibit No. 4 a comment by General Emmons, reported in the Honolulu Advertiser of today's date, April 6th, 1944.

Mr. Anthony: No objection.

The Court: Received in evidence as Exhibit 4, a clipping from this morning's Advertiser.

Mr. Ennis: Yes, containing a statement by General Emmons that the Japanese attacking on the Pacific Coast of the United States is still possible. [502]

(Respondent's Exhibit "No. 4" was received in evidence.)

RESPONDENT'S EXHIBIT No. 4

Honolulu Advertiser, Apr. 6/44

Emmons Says Jap Attack On Coast Possible

San Francisco, April 5 (UP)—In a letter to the 9th regional office of civilian defense, Gen. Emmons said that under the existing military situation in the Pacific the enemy "has the following capabilities and it is possible an attack on Pacific coast targets may be made in any of the following manners or combinations thereof:

"1. Sabotage of vital industries, communications and public utilities.

"2. Submarine attacks by shelling vital coastal installations.

"3. Limited air attack on the Pacific coast by carrier-based planes, with possible targets in vital production and congested areas.

"4. Nuisance bombing and incendiary attacks by submarine-based planes on forested and congested areas.

"5. Commando raids by landing parties in vital areas."

[Endorsed] Filed 4-6-44.

The Court: It is after four now. Do you have another short witness?

Mr. Ennis: Well, I have Private Hunter, whose testimony is similar to Corporal Bowerman's your Honor. We can go on or wait until tomorrow, or just as you wish.

The Court: Would it be any real hardship on them to appear tomorrow? Well, I think we might just as well adjourn at this time. The Court is adjourned until nine o'clock tomorrow.

Mr. Anthony: Before the Court adjourns, your Honor, may I ask one question of Mrs. Thompson before she leaves the Courtroom? Would you mind coming up here, Mrs. Thompson?

The Court: You said one question. Do you wish her to take the stand?

Mr. Anthony: No, your Honor, she can stand right here.

Q. Mrs. Thompson, can you explain to me why this original transcript has no numbers in the middle of the page and the copy that I have attached to the petition is numbered?

A. Why, I made this copy but I didn't make that one.

Q. What was the one that was attached to the petition made from?

A. Attached to the petition?

Q. Yes. This is the petition—I mean attached to the return to the order to show cause. This is the Government paper which was filed in this Court, and evidently it was made from some original.

A. Well, there were copies made from this. This is the one that I typed. [503]

Mr. Ennis: You don't know? You don't know how this particular copy was made?

Mr. Anthony: You don't know? All right, thank you.

The Court: When was this made? Will you ask the witness when was this made?

Mr. Ennis: Mrs. Thompson, would you like to answer one more question for the Judge?

The Court: When did you make that transcript?

The Witness: I made this original transcript when Judge Mundo asked me to. I just don't remember when. And he said, "Type it up."

The Court: Right away after the trial or after this case started or when?

The Witness: I don't remember just how long afterwards it was—about a week, I think. I'm not sure.

The Court: You made it at the request of the Judge?

The Witness: Judge Mundo.

The Court: All right.

(The hearing adjourned at 4:15 o'clock p.m.)

[504]

Honolulu, T. H.
April 7, 1944
9:00 o'clock, a.m.

(The hearing continued.)

The Clerk: Habeas Corpus Docket No. 298, in the matter of the application of Lloyd C. Duncan for a Writ of Habeas Corpus, called for further hearing.

Mr. Anthony: Ready for the Petitioner. May we proceed, your Honor?

The Court: You may proceed.

Mr. Anthony: Governor Stainback, will you take the stand, please?

HON. INGRAM M. STAINBACK,

Governor of the Territory of Hawaii, a witness in behalf of the Petitioner, being duly sworn, testified as follows:

Direct Examination

By Mr. Anthony:

Q. Your name, please?

A. Ingram M. Stainback.

Q. At the present time you are the Governor of the Territory of Hawaii? A. I am.

Q. Governor, where were you born?

A. Somerville, Tennessee.

Q. Did you go to school in Tennessee? [505]

A. Yes.

Q. And where did you go to college?

A. Princeton and the University of Chicago Law School.

(Testimony of Hon. Ingram M. Stainback.)

Q. What year did you come to the Territory of Hawaii? A. 1912.

Q. And you have resided in the Territory ever since 1912? A. I have.

Q. Have you ever held any Federal office, any office other than Governor?

A. Yes, quite a number.

Q. What are those offices, Governor?

A. Attorney General of the Territory, U. S. Attorney for the District of Hawaii, U. S. Federal Judge; besides, I have been on a number of commissions, public utility commissions—several others.

Q. Under the Territorial Government?

A. Yes.

Q. In between——

The Court: You were in the Army also, were you not?

A. Yes. Yes, I was in the last war for two years, but I still resided in the Territory.

Q. You were an officer in the U. S. Army during the last war? A. Yes, I was.

Q. During the times when you did not hold public office, [506] did you practice law in this Territory? A. I did.

Q. And that involved a general practice of law?

A. A general practice of law, yes, mostly civil, very little criminal.

Q. Do you believe that you are quite familiar with the affairs of this Territory?

A. I think so.

(Testimony of Hon. Ingram M. Stainback.)

Q. You, of course, were here on December 7, 1941?

A. Yes, I was Federal Judge at that time.

Q. You were familiar with the conduct of the community immediately following December 7th and the state of public order or disorder—are you?

A. I think so.

Q. Governor, was there anything that prevented the courts from functioning in accordance with law immediately following the attack of December 7, 1941?

A. No. As a matter of fact, I did hold Federal Court on December 8th in the adjoining room.

Q. Immediately after the attack, you recall the military authorities took over portions of Iolani Place, do you recall that? A. Yes.

Q. Do you recall what occurred in regard to the placing of barbed wire around Government buildings? [507]

A. Yes, barbed wire was placed around there and——

Q. The City Hall?

A. City Hall, I believe; I am not sure; I had no occasion to go over there. This building was barricaded with sand bags and the front doors closed, and we had to come in the back way for several months; machine guns were placed back in this corridor back there, sand bags erected.

Q. What have you to say as to the conduct of the population during the period following the outbreak of war, the civil population?

(Testimony of Hon. Ingram M. Stainback.)

A. I would say it was admirable from every standpoint; the civil population gave a wonderful account of itself, both on the 7th and subsequent to; the various organizations that had prepared for attack and everybody seemed to be most intent on doing what they could to protect this Territory, and the Government as a whole, the United States, I should say.

Q. Governor, when were you appointed to your present office?

A. The latter part of July 23rd, I think; I took office August 17, 1942.

Q. Since you were appointed Governor, can you tell the Court how the various departments of the Territorial Government have functioned in a general way?

A. Well, I would say normally, they exercised their normal functions. Of course, we have adopted some war regulations, [508] due to the fact that we are under war conditions, like food importation and raising of food, the fact that the Government has gone into the raising of food which ordinarily, of course, wouldn't occur; we have exercised a number of functions under what we call the "M-Day Bill." Otherwise, I should say we proceeded as under peacetime.

Q. The Hawaii Defense Act granted broad powers to the Governor, as you know. Is that not correct? A. Yes.

Q. Do you know of any other piece of legislation in the United States or any state of the United

(Testimony of Hon. Ingram M. Stainback.)

States, or in any English-speaking country, that grants any broader powers than the Hawaii Defense Act grants to the Chief Executive?

A. I don't know of any. Of course, I couldn't say that I have examined all the legislation of all the states and countries, but I personally don't know of any.

Q. Will you briefly state the operations of the Office of Civilian Defense in this Territory, what briefly has been done in that regard?

A. Well, it is what the name designates. We have provided for the care and protection of civilians during the time of emergency. They have set up first aid stations and ambulance corps, blood banks, and matter of that kind to meet any casualties that might result from bombs or attack of any kind.

Q. An elaborate system of air raid wardens?

[509]

A. An elaborate system of air raid wardens, fire wardens and fire companies, volunteer companies, first aid volunteers, and a great many matters relating to the protection of the civilian community. We have even set up first aid hospitals, and some of these hospitals we have used—because of the pressure, we are using them now not as first aid but as general civilian hospitals.

Q. Governor, do you recall, do you have any recollection of the approximate number of people engaged in O.C.D. activities? A. Now or——

Q. At the present time.

(Testimony of Hon. Ingram M. Stainback.)

A. I think I have the figures; some 700 or 800, I think; 803 as of March, 1944. In November, 1942, we had 2,513.

Q. Are they full-time employees, Governor?

A. Yes, I think that is correct.

Q. In addition to that, there is a large number of volunteer workers for the O.C.D., is that not a fact?

A. Oh, yes, quite a number. I wouldn't be too positive as to whether all those people are full-time employees. I have no data to show whether they are all full-time employees.

Q. What was the budget of the O.C.D. when you took office, Governor?

A. Well, in November, 1942, is when I have the statement; that was three months after I took office; a little over two months. It was $738,441.13 per month. [510]

Q. What is it at the present time?

A. March, 1944, $193,349.78. The only increase has been in certain emergency medical services, due to taking over certain tubercular patients. Outside of that, there has been a decrease in every department.

Q. What has been the progress of the O.C.D. organization in regard to the expenditure of funds? In which direction has that gone since your term of office?

A. Well, it has gone down, I'd say, some 74 per-cent.

(Testimony of Hon. Ingram M. Stainback.)

Q. And what is the occasion for that?

A. Well, because we don't feel that there is justification for keeping up the expenditures on a great many lines. For instance, we are doing away now—we haven't yet but we are going to do away with these first aid stations, and we will have mobile units, volunteer units. I might add that practically all this reduction was done under and with the advice of Dr. Bayer, who is down here to survey this. He is head of the O.C.D. medical department—he was; he is also connected with the Public Health of New York State.

Q. That's Colonel Bayer attached to the Public Health Service?

A. Yes, Colonel Bayer, who is a Colonel in the O.C.D.

Q. Have you had occasion during your term of office to visit the other islands of this group, Governor?

A. Yes, I visited all of them at least once or twice or [511] more, several times, I think, with the exception of Lanai and one of the small islands; but Hawaii, Kauai, Maui, Molokai, I visited.

Q. From time to time you confer with members of the Armed Forces in regard to the state of this Territory? A. Yes, yes, we have to.

Q. On preparedness?

A. Yes, hardly a week passes that there isn't some question that has a bearing on the Armed Forces. Last week there was the question of water on Kauai; we had to divert certain funds to in-

(Testimony of Hon. Ingram M. Stainback.)

crease water supply in certain districts because of the presence of large numbers of Armed Forces. I have to keep familiar with that. On Maui, the President of the Board of Health is now over there—at least was the other day—in connection with certain diseases brought in by Marines. And in my duties as Governor, naturally I've got to be thoroughly familiar with the Armed Forces here where they are.

Q. Do you obtain any information in regard to the state of defense of these islands?

A. I think I know very thoroughly the state of defense of this island. I have visited most every—I won't say dug-out, but the principal parts.

Q. Installations?

A. Installations. I have, on this island and the other islands, watched the operations of the air defense system, that is, what you might term the Radar. I have talked with [512] many many officers, both Army and Navy, on various questions involving the set-up here, to get their opinions on various problems, not always in an official way. In fact, we very seldom meet that something isn't discussed or brought out with reference to either military or Navy—maybe not on any particular installation or matters of that sort. I have talked with high Army officers and low officers on questions of the possibility of invasion and matters of that sort in great detail.

Q. Governor, having in mind your statutory duties under Section 67 of the Hawaiian Organic

(Testimony of Hon. Ingram M. Stainback.)

Act, do you have an opinion whether or not Hawaii is now in imminent danger of invasion?

A. Yes, have an opinion.

Q. Will you please state your best judgment on that question?

A. I do not think it is in imminent danger of invasion.

Q. Having in mind your duties as Chief Executive under Section 67 of the Hawaiian Organic Act, do you have an opinion whether or not the public safety requires the suspension of the privilege of the Writ of Habeas Corpus?

A. I do not think so.

Q. Will you give us your best judgment whether or not any military necessity exists for the trial of civilians in provost courts for crimes and offenses other than crimes against the laws of war? [51]

Mr. Ennis: I object, your Honor, on the grounds that I don't believe the Governor is qualified to answer the question based upon military necessity.

Mr. Anthony: If the Court please——

The Court: Well, he's asking for his opinion based upon his knowledge and his responsibility as Chief Executive of the Territory. I think that that shows a sufficient qualification to have and express an opinion on that subject.

Mr. Ennis: Well, I'd like to make my point clear, your Honor. I thought the prior questions as not objectionable because they were addressed to the Governor's statutory duties under Section 67 of

(Testimony of Hon. Ingram M. Stainback.)

the Organic Act, his view on what the public safety requires and the suspension of the privilege of the writ, and his view as to whether there is an imminent danger of invasion. But the last question that Mr. Anthony asked was, whether in his opinion military necessity required provost courts. Now, there is nothing in Section 67 of the Organic Act which bears on that specific question, and I think that, including in the question the phrase whether in his view military necessity required it, goes beyond the qualifications of the Chief Executive of the Territory.

Mr. Anthony: Your Honor, this will get us on an argument on the question of law, which later will be addressed to this Court, namely, whether or not Mr. Ennis's idea of how martial law operates is correct, or whether the Petitioner's idea is correct. Our view is that the Chief Executive, in truth and [514] in fact and in law, is the Chief Administrator, if I may use that phrase, of martial law when it is properly operated. I concede, that is not the way it is being done at present, but if any view of the law is correct, then it is important to ascertain from the Chief Executive whether or not any necessity exists for the trial of civilians in military tribunals.

The Court: Objection overruled.

Mr. Ennis: Exception.

The Witness: May I have the question?

(The Reporter read the last question.)

(Testimony of Hon. Ingram M. Stainback.)

A. I know of no reason, military or otherwise, why they should be tried in provost courts.

By Mr. Anthony:

Q. Governor, you have given us your best executive judgment on whether the Territory is in imminent danger of invasion and whether the public safety now requires the suspension of the privilege of the Writ of Habeas Corpus, and your answer has been that it does not and that Hawaii is not in imminent danger of invasion. Will you please give us your best judgment as to the answer to those questions during the year 1943?

A. I do not think it was in any imminent danger of invasion during the year 1943. I would say, subsequent to Midway, in 1942, that we could never call this Territory in imminent danger of invasion. I understand the word "imminent" means about to occur immediately. [515]

Q. That's a matter for the Court.

A. Yes. So under that interpretation I certainly have not felt, since I have been Governor, that we have ever had any imminent danger of invasion.

Q. Now, in your judgment did the public safety require the suspension of the privilege of the writ of Habeas Corpus during the year 1943?

A. No.

Q. Governor, you have seen from time to time the General Orders issued out of the Office of the Military Governor, have you not?

(Testimony of Hon. Ingram M. Stainback.)

A. Yes, I think my office is usually furnished a copy, I believe.

Q. At any time since you have been the Chief Executive of this Territory, have any of those orders been submitted to you for your approval?

A. No, not to my recollection.

Q. The practice has been to issue those orders without your approval, is that not correct?

A. Yes, that is true.

Q. At any time during your tenure as Chief Executive have you ever been notified in advance of the issuance of any of the General Orders that have been issued out of the Office of the Military Governor?

A. I believe they did issue an order on the chlorination of water; I know, I think we discussed that prior to an order, [516] direction, that I gave that the water be chlorinated. I am not sure they issued an order on that; I believe they did but I am not sure. That was talked over quite at length with General King.

Q. That involves some financial arrangement?

A. Yes, that is a question of who was going to pay the bill and other matters, too.

Q. Governor, are you familiar with the existence of censorship in this Territory?

A. Yes, I am.

Q. Do you know whether or not the mails between here and the mainland of the United States are now censored? A. Yes.

(Testimony of Hon. Ingram M. Stainback.)

Mr. Ennis: Objection. It is irrelevant. May I have the answer stricken, your Honor?

Mr. Anthony: I have no objection to it going out, for Counsel to get in his objection.

The Court: It may be stricken.

Mr. Anthony: I believe it is relevant on the issue of what the pubiic safety requires.

The Court: It is stricken.

Mr. Anthony: I don't hear the Court.

The Court: It is stricken.

Mr. Anthony: I now ask that the witness be permitted to answer the question. I believe it is relevant to the issue as to what the public safety requires. [517]

The Court: The witness answered the question. Upon motion that it be stricken, it was ordered stricken.

Mr. Anthony: And your Honor now sustains an objection to me asking that question, is that the Court's position?

The Court: I don't follow you.

Mr. Anthony: I will ask the question again.

Q. Is there censorship of the mails between Hawaii and the mainland of the United States at the present time?

Mr. Ennis: Objection, on the ground that the answer to that question is irrelevant to the issues in the case, your Honor.

The Court: Well, as I understand it, that is the same question that was asked and answered before. It was moved to strike.

(Testimony of Hon. Ingram M. Stainback.)

Mr. Anthony: That is correct.

The Court: It was moved to strike the answer and the answer was ordered stricken.

Mr. Anthony: Yes, I understood. Maybe I'm a little dull this morning. I understood it was stricken, but for the purpose of Mr. Ennis to get in a proper objection so that the Court could then rule on it, I would like to be heard upon it before your Honor does rule upon it.

The Court: Very well.

Mr. Anthony: May I proceed?

The Court: Yes.

Mr. Anthony: One of the conditions which Mr. Ennis, [518] representing the Government, must comply with in order to maintain his position that Mr. Duncan may be tried in a provost court for a non-military offense is that the public safety requires the suspension of the privilege of the Writ of Habeas Corpus. That is one of the conditions that he must meet. Now, I propose to show by this line of evidence that the public safety may be adequately dealt with by means other than the suspension of the privilege of the Writ of Habeas Corpus and the trial of civilians in these military tribunals. I propose to show that we are a completely regimented community, that there are many other means of controlling the civil population other than the trial and conviction and sentencing of civilians in military tribunals. And on that issue I think the matter of the degree of regimentation, the degree of censorship, is relevant.

(Testimony of Hon. Ingram M. Stainback.)

Mr. Ennis: If your Honor please, I still don't see the connection between censorship and trying the Petitioner in a provost court. And I don't believe that whether or not the public safety requires suspension of the privilege of the writ can be shown merely by indicating that in some respects unrelated to this case, namely, censorship, that some other means than censorship by the military, if it exists, could be adopted.

The Court: The order to strike stands.

Mr. Anthony: I'd like to make an offer of proof, if the Court please, at this time for the record. [519]

The Court: You may.

Mr. Anthony: I offer to prove that the Territory of Hawaii at this time is under complete censorship covering the mails, radio, telephone, inter-island telephone, and trans-Pacific telephone; that that censorship, so far as the mails are concerned, is a hundred percent censorship, and that intercepts are furnished regularly to the department of the Government in regard to the contents of the mails that are censored.

Mr. Ennis: I object to the proof being received in evidence, your Honor, as irrelevant to the issues.

The Court: The offer is denied.

Mr. Anthony: May we have an exception, your Honor?

The Court: Yes.

(Testimony of Hon. Ingram M. Stainback.)

By Mr. Anthony:

Q. Governor, have the departments of the Federal Government functioned according to law since the time you have been Chief Executive here—civil departments?

A. Yes, to the best of my knowledge.

Q. At any time have you observed any public disorder or commotion or civil strife in this Territory?

A. No, there has been none except as you may refer to the ordinary disorders of peacetime: fights and drunkenness and matters of that sort. There have been no riots or rebellions or anything of that sort. We have the ordinary difficulties that confront the Government in ordinary times [520] of peace, possibly exaggerated a little by a large increase in population.

Q. Have you ever conferred with any of the Commanding Generals of this Territory in regard to the necessity for the continuance of martial law?

A. Yes.

Q. With whom did you confer?

A. General Richardson.

Q. Will you please tell the Court what the substance of that conference was?

A. Well, the first time that you might say I had a formal discussion with him was—I don't remember the date but it was quite some months ago at the General's quarters in Shafter. He invited me out to lunch. I had several questions, including the matter of abolishing martial law entirely. I dis-

(Testimony of Hon. Ingram M. Stainback.)

cussed it in rather general terms, and I believe I left him a memorandum at that time and told him that I'd like for him to consider it. I pointed out that practically 95 percent of the civil government had already been restored, that such other powers as were being exercised here under the so-called military government or martial law could be accomplished in a legal way under the Act of Congress giving the President special powers to declare certain areas defense areas, and orders could be made under the authority of the President, such as prohibiting people or aliens or others from certain areas, and curfew and blackout and various things of that [521] sort; that this power had been sustained by the Supreme Court of the United States in the case of Harigashi—or maybe I'm a little off there——

Q. Hirabayashi.

A. What's the name?

Q. Hirabayashi.

A. I found, for my own protection as well as for the benefit of the community and protection of officers who were enforcing these laws, that my mind was in a much better way to operate and accomplish everything that he was trying to accomplish now if we proceeded in the Federal Court with the backing of Congress rather than with a vague idea of martial law. The General was very nice and said he would take up that matter.

I again talked about it on January 14th. The General was over to my house for lunch. At that

(Testimony of Hon. Ingram M. Stainback.)

time that came up mainly through his request to use the Territorial Board of Paroles and Pardons on men who had been committed to the Territorial prisons by the military courts. I raised quite a number of questions which I submitted to you before you left the office. I don't believe you answered, so I worked out some answers of my own and gave the General a little memorandum at that time on the question of whether there had been any legal convictions. I said this question will have to be faced some time; we just can't keep people down; some of them have been sentenced for life and some for five years; [522] and the quicker we can raise the question and dispose of it, the better it would be for everybody concerned. The question would be raised some time. And I left the little memorandum with the General and told him I didn't expect him to answer it then but I'd like for him to consider it and go into it. He was very polite and nice and agreeable but I have had no answer on that question.

He did raise then the question of the labor control, and I hadn't discussed control of labor in my agenda, as to what could be done under this Act of Congress. And he said that was one of the most important reasons, I think, to continue martial law, the important reason. I couldn't tell the Court the exact words. There has been adequate control of labor by the War Manpower Commission here, and I felt all along and expressed my opinion that time, that you can't control the water in one half

(Testimony of Hon. Ingram M. Stainback.)

of the barrel by one bunch and the other half by the other. But I believe he stated that possibly some way could be worked out whereby they would give up this control of labor. Of course, under the proclamation labor control was divided. That was one of the matters that was taken up in Washington. The Army was given the control of public utilities' laborers, the dock laborers, on Army and Navy contracts. And he felt that was vitally important to the war effort.

Q. Governor, there has been attaached to the return and answer in this cause affidavits by Admiral Nimitz and by [523] General Richardson. Have you examined those affidavits?

A. I have, not too carefully, but I examined them.

Q. Is there anything in your testimony that is inconsistent with the affidavits, in your opinion?

Mr. Ennis: Objection, your Honor, on the grounds that a comparison of the testimony and the affidavits is the proper way to determine that question and not the witness' recollection at this time of both his testimony and the affidavits.

The Court: Sustained.

Mr. Anthony: You may cross examine.

Cross Examination

By Mr. Ennis:

Q. Governor, on December 7, 1941, you were a Federal Judge of this District? A. I was.

Q. You observed on that day either any of the

(Testimony of Hon. Ingram M. Stainback.)

enemy action in the Territory or any of the results of that enemy action?

A. I did. I happened to be in my courtroom over there and came down on a Sunday to do some special work, so I heard the various explosions around about. I went back home about as fast as I could go and got in my car and took my binoculars and went up on the hill towards Kaimuki way to watch Pearl Harbor. I don't know whether I saw much of the enemy action. I could see huge clouds of smoke which I thought were coming [524] from the Dohaney tanks. I didn't know they were coming from our warships. I saw some of the planes. People were all ordered off the streets, and I went back to my home in Kahala at that time. I did see some of the planes.

Q. Some of the enemy planes?

A. Well, it was rather difficult to tell which were enemy and which were ours. I saw some dog fights over toward Koko Head—it looked like it—but it was rather difficult to insure who was who and what was what and what was happening. I can't say that I could give any detailed account of it. Of course, we listened to the radio. I did see some of the results of the fire out here, McCully way.

Q. Did you see subsequently some of the damage that was done in Pearl Harbor?

A. Yes, I saw the ships and the others. I didn't go into Pearl Harbor but it was very apparent as you passed by, the Arizona and the Oklahoma and the various ships that had been sunk.

(Testimony of Hon. Ingram M. Stainback.)

Q. From your observations, did the military forces of the Empire of Japan invade the Territory of Hawaii on that day?

A. I would say they attacked us from the air. My terminology of invasion is to enter into the country, to take possession or to loot it. They certainly were very successful in their attack.

Q. Well, would you state that that attack, Governor, [525] did not constitute an invasion of the Territory?

Mr. Anthony: I object to that as a question of law.

The Court: Sustained.

Mr. Ennis: If the Court please, I have no further cross examination of the Governor, but if the Court would permit I would like to make the Governor our witness on a separate subject and ask him a few questions in order to prevent recalling the Governor.

The Court: You may do so. Is there any objection to the Respondent at this time making the Governor their witness?

Mr. Anthony: None whatsoever.

The Court: All right. You may proceed, then, upon that understanding, that the Governor is now your witness.

HON. INGRAM M. STAINBACK,

Governor of the Territory of Hawaii, being previously sworn, testified for the Respondent as follows:

Direct Examination

By Mr. Ennis:

Q. Governor, annexed to the return and answer are copies of your proclamation of February 8, 1943, and copies of correspondence between the Secretary of War, the Attorney General, the Secretary of the Interior, and the President of the United States. Are you familiar with that correspondence?

A. I am.

Mr. Ennis: May I have these documents on which the [526] cover sheet is dated March 31, 1944, marked for identification?

The Clerk: Respondent's Exhibit No. 5 for identification.

The Court: The Clerk will mark it for identification.

(Received and marked for identification Respondent's Exhibit No. 5.)

By Mr. Ennis:

Q. I show you Respondent's Exhibit 5 for identification, consisting of photostatic copies of draft of letter from the three cabinet members I just mentioned to the President, containing initials of the officials in the three departments interested, Interior, Justice and War, and annexed thereto a copy of the proposed proclamation of the Governor. Will you examine those photostats and state whether, ac-

(Testimony of Hon. Ingram M. Stainback.)

cording to your recollection, they appear to be correct copies of that draft initialed by the officers? (Handing witness photostats)

A. Yes, that seems to be a copy and that is the photostatic copy of my signature.

Q. That's a photostatic copy of your signature?

A. Under the word "approved."

Q. Yes. Do you recall the occasion upon which those other signatures were affixed to the original of this photostat, Governor?

A. In general, yes. In all this discussion it was emphasized by the War, the Attorney General, and the Interior that this matter should be settled without going to the President. He had burdens enough without taking up these other troubles. [527]

So I think every department exerted every effort to arrive at an amicable settlement that would in substance restore civil authority as much as we could get and also satisfy the War Department. So we reached a tentative agreement which is contained in the proclamation that is attached here, whereby most of the civil authority would be given to the civil Government, but certain authority, which is mentioned in the proclamation, would be retained by the military authorities. They thought it would be a good idea to have that approved by the President. So these letters were drafted with that idea in mind, and both myself—and I don't know whether I can read this signature—and Mr. Fortas——

Q. He's the Under-Secretary of the Department of the Interior.

(Testimony of Hon. Ingram M. Stainback.)

A. ——McCloy, I assume.

Q. John J. McCloy, the Assistant Secretary of War, Warner Gardner.

A. Solicitor of the Interior Department.

Q. And General Emmons?

A. And General Emmons signed this approval on the formal letter. I only examined the first. Maybe I had better look at the others.

Q. Yes, if you will, Governor.

A. This is from the President, the second letter in the exhibit is from the President addressed to the Secretary of War, and was also signed by me, and the other is approved. [528]

Q. That's an agreed draft which was submitted to the President?

A. Yes, submitted to the President.

Q. And the next, the third document, appears to be a photostat of the proposed proclamation by the Governor?

A. Yes. That was agreed to, but I have in my notes on here "substitute page 3 of the Army proclamation." Apparently there is some change on page three of the original draft. I don't know what it was.

Q. Well, I think for the present purposes, Governor, that it would be sufficient if you would state if that is one draft of the proclamation?

A. That is a draft.

Q. Which also contains the signatures you mentioned?

(Testimony of Hon. Ingram M. Stainback.)

A. Yes, the approval of the signatures mentioned.

Q. By comparison in the record we'll be able to work out the final proclamation.

A. Page three was changed.

Q. But it will appear in the final proclamation?

A. Page three was changed in both proclamations, both mine and the General's. I've got on mine "January 18, Mr. Gardner said 'substitute page 3 of the Governor's proclamation.'"

Mr. Ennis: I request that this be marked as Respondent's Exhibit 6 for identification, these several documents under a seal and certificate of C. Ingling, Chief of Files of the White House. [529]

The Court: It may be marked for identification.

(Received and marked Respondent's Exhibit No. 6 for identification.)

By Mr. Ennis:

Q. Governor, I request you to examine Respondent's Exhibit 6 for identification, which purports to be photostats of a letter dated February 1st, 1943, to Secretary Stimson from the President, but bearing a typewritten signature, and a letter of January 18th, 1943, photostat of a letter, bearing the actual signature, photostat of the signature of the Secretary of War, the Attorney General, and the Secretary of the Interior. Will you examine the letter of January 18th and state, according to your recollection, whether that appears to be a photostat of the letter from the three members of the cabinet to the

(Testimony of Hon. Ingram M. Stainback.)

President, enclosing a copy of your proposed proclamation of February 8th?

A. That is the same as the copy that I have, excepting that the copy that I have does not bear the signature of the Secretary of War, the Attorney General, nor the Secretary of the Interior.

Q. But the text is the same?

A. The text is the same as the one in my files, but it does not bear the signatures.

Mr. Ennis: I request that this be marked as Respondent's Exhibit 7 for identification.

The Court: It may be marked for identification.

[530]

Mr. Ennis: This is a document dated March 22, 1944, and affixed thereto by seal, a photostat of a letter dated February 1, 1943, bearing the photostat of the signature of the President to a letter to Secretary Stimson.

(Received and marked Respondent's Exhibit 7 for identification.)

Q. Governor, I request you to examine Respondent's Exhibit 7 for identification and will you state whether that appears to be a photostat of the letter from the President to Secretary Stimson but bearing a photostat of the President's signature? (Handling witness the exhibit)

Mr. Anthony: I might state, if the Court please, that there is no issue about this. There is no issue about the execution and delivery of these documents except an issue of relevancy.

(Testimony of Hon. Ingram M. Stainback.)

The Witness: This is the same as the letter in my file and bears the photographic copy of the signature of the President, and the letter in my file does not bear the signature of the President.

Mr. Ennis: I request that this be marked as Government's Exhibit 8 for identification, an agreed draft, photostat of agreed draft of a letter from the Governor of Hawaii, dated January 18, 1943, to General Emmons, under a certification of the War Department dated March 31, 1944. (Handing a photostat to the Court)

The Court: Let it be marked for identification.

[531]

(Received and marked Respondent's Exhibit 8 for identification.)

Q. Governor, I request you to examine Respondent's Exhibit 8 for identification and state whether or not it is a photostat of a letter from the Governor, yourself, to General Emmons, bearing under the word "approved" your signature and the signature of the other officials of the departments which appear in the other letters.

A. This is the photostat of the agreed draft that was arrived at in Washington. The letter was not written until I came back to Honolulu, and at the time I believe General Emmons had left quite some time prior to my leaving Washington.

Q. Was the letter in this form sent to either General Emmons or his successor in office?

A. It was sent to General Emmons.

(Testimony of Hon. Ingram M. Stainback.)

Q. It was? A. Yes.

Q. In this form?

A. Yes. I am not quite sure; I have nothing but the draft, but I am quite sure that such a letter was sent.

Mr. Ennis: If the Court please, a word of explanation. The opposing Counsel had not questioned the authenticity or the correctness of the copies of these original documents which are annexed to the answer and response, but I have marked these for identification and ask the Governor about [532] them because there are two purposes to be served: one, to prove the documents, which there is no objection to, and also to indicate by the signatures on the agreed draft that the three departments and the Governor worked on this problem and came to an agreement which is disclosed by their signatures on the drafts, which of course do not appear on the final letters.

Q. Now, Governor, are these documents the evidence of your consultations in Washington which culminated in your proclamation of February 8, 1943?

A. That is evidence of our agreement, yes.

Q. And they are an accurate statement of your agreement?

A. That is correct. Like all agreements, I might say that it is more or less of a compromise agreement.

Q. But they do express the sense of the agreement which was reached? A. That is true.

(Testimony of Hon. Ingram M. Stainback.)

Mr. Ennis: At this time, your Honor, I would like to offer in evidence Respondents' Exhibits 5, 6, 7 and 8.

The Court: Let me know the particular thing in the documents that you want to call the Court's attention to.

Mr. Ennis: I would like to call the Court's attention to the drafts of the letter from the three members of the cabinet to the President initialed by the officials concerned, and the draft of the President's reply, initialed by them, to prove to the Court that it was the intention and the agreement [533] of the Government departments concerned that the resulting proclamation of February 8, 1943, should, so far as the law permitted and so far as their intentions could accomplish, accomplish the continued suspension of the privilege of the writ and the continuation of martial law.

The final exchange between the three cabinet members and the President, which are not initialed, I offer as additional evidence of the intentions by the public officials concerned as to the meaning of the language of the proclamation itself, if there is any question about the language.

The Court: Do these documents which you have and offer to put in evidence contain a copy of the proclamation that was actually issued?

Mr. Ennis: Yes, your Honor, there is annexed to the letter sent to the President a copy of the proclamation in the form in which it was issued.

The Court: Is there any objection?

(Testimony of Hon. Ingram M. Stainback.)

Mr. Anthony: I have no objection to the authenticity of the letters your Honor, and I have no objection to the documents going in evidence, preserving the right to argue as to the relevance and the construction of this proclamation. The proclamation, like any other written instrument, shall be interpreted by the instrument itself. And whether or not martial law exists does not depend upon the proclamation, as Counsel knows. With that statement, I have no objection to them going in evidence.

[534]

The Court: The several exhibits offered are received in evidence as Respondent's Exhibit 5, marked 5-1, 5-2, etc. How many are there?

The Clerk: Four, your Honor.

(Respondent's Exhibit 5-1, 5-2, 5-3 and 5-4 received in evidence.)

RESPONDENT' EXHIBIT No. 5-1

United States (Cut) of America
War Department
Washington, March 31, 1944

I Hereby Certify that the attached copies of documents relating to governmental functions in the Territory of Hawaii, are true and exact photostatic copies made from official record on file in the office

(Testimony of Hon. Ingram M. Stainback.)

of the Assistant Secretary of War, War Department, Washington, D. C.

HARRISON A. GERHARDT
Harrison A. Gerhardt
Lt. Colonel, General Staff Corps Executive to Asst. Secretary of War

I Hereby Certify that Lt. Colonel Harrison A. Gerhardt, General Staff Corps, who signed the foregoing certificate, is the Executive to the Assistant Secretary of War, and that to his certification as such full faith and credit are and ought to be given.

In Testimony Whereof I, Henry L. Stimson, Secretary of War, have hereunto caused the seal of the War Department to be affixed and my name to be subscribed by the Assistant Chief Clerk of the said Department, at the City of Washington, this 31 day of March, 1944.

[Seal] HENRY L. STIMSON
Secretary of War.
By J. C. COOK
Assistant Chief Clerk.

War Department
Form No. 7

(Testimony of Hon. Ingram M. Stainback.)

Agreed Draft

[In longhand]: File Copy
War Dept.

Dear Mr. President:

We are pleased to report that after lengthy discussions the Departments of War, Justice, and Interior have reached an operating agreement upon the distribution of governmental functions between the civil and the military authorities in the Territory of Hawaii.

Pursuant to this agreement the Governor of Hawaii and the Commanding General will issue simultaneous proclamations. Their effect is to leave unchanged the state of martial law and the suspension of the writ of habeas corpus, to restore to the civil government the majority of civil functions hitherto exercised by the military authorities, and to provide emergency powers for the military government. Copies of the proclamations are enclosed for your information.

We also enclose a draft of a letter which we suggest you might appropriately send to the Secretary of War. It is designed, as you will observe, to reassure the civilian Departments that there will

(Testimony of Hon. Ingram M. Stainback.)

be no unnecessary resumption of the restored functions by the military authorities.

Sincerely yours,

HENRY L. STIMSON
Secretary of War

Attorney General

Secretary of the Interior

Approved

WARNER W. GARDNER
INGRAM M. STAINBACK
[Illegible]
[Illegible]
[Illegible]

The President
The White House.

[In longhand]: Copy of entire set sent to C&R, OSW 1-22-43

[Typewritten in righthand margin]: X—President of the U. S. ~~ASW 370.8 Hawaii~~

Agreed Draft

1/18/43

[In longhand]: of letter from the President to the Secretary of War

[In longhand]: File Copy
War Dept.

My dear Mr. Secretary:

I have examined the proposed proclamation to be issued by the Commanding General, Hawaiian Department, and the proposed proclamation to be is-

(Testimony of Hon. Ingram M. Stainback.)

sued concurrently by the Governor of Hawaii. I understand that the Departments of War, Justice, and Interior have agreed in this manner to resolve the difficult questions surrounding the administration of government in the Territory of Hawaii.

I wish to congratulate all the Departments concerned in their cooperative and successful efforts to reach an amicable solution of the knotty problems involved. In an area of such strategic importance as the Hawaiian Islands in a time of active war in the Pacific, I can readily appreciate the difficulty in defining exactly the boundaries between civil and military functions. I think the formula which this proclamation applies meets the present needs.

I know that General Emmons will do all that he can, consistent with his military responsibility, to refrain from exercising his authority over what are normally civil functions. I am confident that the military and civil authorities will cooperate fully. If an occasion should arise on which, after consultation with the civil authorities, the Commanding General felt it necessary to take action under the provisions of paragraph 3, I should like to be informed of the circumstances under which such action was taken. I hope also that there will be a further restoration of civil authority as and when the situation permits.

Sincerely yours,

.....

[Six signatures illegible.]

Hon. Henry L. Stimson,
Secretary of War.

Approved

(Testimony of Hon. Ingram M. Stainback.)

Proclamation

U. S. Army

Headquarters, Hawaiian Department.

Honolulu, ..., 1943.

To the People of Hawaii:

I, Delos C. Emmons, Lieutenant General, United States Army, as Commanding General, Hawaiian Department, and as Military Governor of Hawaii, do hereby proclaim:

1. Full jurisdiction and authority are hereby relinquished by the Commanding General to the Governor and other officers of the Territory of Hawaii, to the courts of that territory, to the city and county of Honolulu, to other counties, to all other officers of the territory or other persons acting under its authority, to the United States District Court for Hawaii, and to the appropriate officers of the United States, to exercise such powers as may now or hereafter be vested in them respectively by law over the following matters and others necessarily related thereto:

(a) Control of prices

(b) Rationing of commodities among the civilian population

(c) Control of hospitals, medical personnel, and medical supplies

(d) Food production by and distribution of food among the civilian population

(e) Control of rents

(f) Control of transportation and traffic by land,

(Testimony of Hon. Ingram M. Stainback.)

except the movement of troops, military supplies and equipment, and except that the Commanding General may prescribe rules for the traffic during blackout hours

(g) Public health, sanitation, and prevention of disease among civilians

(h) Licensing of businesses, regulation of hours of business, and types of forbidden occupations

(i) Judicial proceedings, both criminal and ~~civil~~, except:

(1) Criminal prosecutions against members of the armed forces. Members of auxiliary armed forces shall be included within the term "armed forces" after induction into the service and also before induction in respect of any act or omission certified by the Commanding General to be in the line of duty.

(2) Civil suits against members of the armed forces, as defined in subparagraph (1), in respect of any act or omission certified by the Commanding General to be in the line of duty.

(3) Criminal prosecutions for violations of military orders.

The Commanding General may waive the above exception with respect to any particular prosecution or suit, or any class of prosecutions or suits, thereby permitting such prosecutions or suits to be tried in the appropriate court of the territory or in the United States District Court for Hawaii, as the case may be.

(Testimony of Hon. Ingram M. Stainback.)

(j) Control of imports for civilian consumptio and exports by civilians within allotments of to nage made by the Commanding General

(k) Censorship of mail from civilians in t territory

(l) Control of liquor and narcotics

(m) Schools and children

(n) The custody of alien property

(o) Collection and disposition of garbage, ash and other waste

(p) Banking, currency, and securities, provid that the Commanding General may prescribe t measures to be taken to prevent the enemy fro obtaining securities or money or realizing up them if he should obtain them

(q) Civilian defense activities, except that t Commanding General shall have jurisdiction prescribe the duties of the Civilian Defense Cor and to regulate and inspect their training

(r) Control of the supply, employment, hou wages, and working conditions of labor, except as (1) employees of the United States under the W Department or the Navy Department, (2) worke employed on construction and other projects und the War Department or the Navy Department, (stevedores and other workers employed on doc and dock facilities, and (4) employees of publ utilities. It is contemplated that the Commandi General and the Governor of Hawaii by mutu agreement will appoint a joint advisory committe which shall from time to time consult and advi

(Testimony of Hon. Ingram M. Stainback.)

with each of them with reference to labor matters in their respective fields.

2. The Commanding General, Hawaiian Department, is charged with responsibility for the defense of the Hawaiian Islands and for their preparation for use as a base for offensive operations. For such purposes he shall continue, so far as he deems the military security of the territory to require, to exercise full jurisdiction over all matters over which he now has jurisdiction except such as are transferred to civil authorities pursuant to paragraph 1 of this proclamation.

3. Whenever the Commanding General, in the light of an existing military emergency or in anticipation of any military emergency, considers it necessary for the security of the islands or their use as a military or naval base, he shall have power, upon a written declaration of the existence or the anticipation of a military emergency, to resume such of the functions and jurisdictions as are hereby or may hereafter be transferred to the civil authorities, or to issue such additional military orders, after consultation with the Governor of the territory where civilian rights and the administration of the civilian government are affected, directing such action as in the judgment of the Commanding General may be required for the military security of the territory.

4. Neither this proclamation nor the revocation of orders announced in paragraph 5 hereof shall operate to invalidate any conviction, or any appli-

(Testimony of Hon. Ingram M. Stainback.)

cation of military orders to persons or activities, or any other action, which occurred prior to the effective date of this proclamation or such revocation.

5. This proclamation shall take effect thirty days after its date. Those parts of all military orders affecting the subjects enumerated in paragraph 1 hereof are hereby revoked effective thirty days after the date hereof.

DELOS C. EMMONS,
Lieutenant General, U. S. Army, Commanding
Military Governor of Hawaii.

Approved:

WARNER W. GARDNER
INGRAM M. STAINBACK
[Three signatures illegible]

By the Governor of Hawaii

A PROCLAMATION

Whereas, the Governor of Hawaii by his proclamation of December 7, 1941, placed the Territory of Hawaii under martial law, in exercise of his powers under section 67 of the Organic Act, which action was confirmed by the President of the United States on December 8, 1941; and

Whereas, a state of martial law remains in effect and the privilege of the writ of habeas corpus remains suspended;

(Testimony of Hon. Ingram M. Stainback.)

Now, Therefore, I, Ingram M. Stainback, Governor of Hawaii, under the authority given by section 67 of the Organic Act, do hereby proclaim:

1. The Governor of Hawaii and the other civilian officers and agencies of the federal, the territorial and the local governments, will resume on the thirtieth day hereafter their respective jurisdictions, functions and powers, according to law, with respect to the following matters, and others necessarily related thereto:

(a) Control of prices

(b) Rationing of commodities among the civilian population

(c) Control of hospitals, medical personnel, and medical supplies

(d) Food production by and distribution of food among the civilian population

(e) Control of rents

(f) Control of transportation and traffic by land, except the movement of troops, military supplies and equipment, and except that the Commanding General may prescribe rules for the traffic during blackout hours

(g) Public health, sanitation, and prevention of disease among civilians

(h) Licensing of businesses, regulation of hours of business, and types of forbidden occupations

(i) Judicial proceedings, both criminal and civil, except:

(1) Criminal prosecutions against members of the armed forces. Members of auxiliary

(Testimony of Hon. Ingram M. Stainback.)

armed forces shall be included within the term "armed forces" after induction into the service and also before induction in respect of any act or omission certified by the Commanding General to be in the line of duty.

(2) Civil suits against members of the armed forces, as defined in subparagraph (1), in respect of any act or omission certified by the Commanding General to be in the line of duty.

(3) Criminal prosecutions for violations of military orders.

The Commanding General may waive the above exception with respect to any particular prosecution or suit, or any class of prosecutions or suits, thereby permitting such prosecutions or suits to be tried in the appropriate court of the Territory or in the United States District Court for Hawaii, as the case may be.

(j) Control of imports for civilian consumption and exports by civilians within allotments of tonnage made by the Commanding General

(k) Censorship of mail from civilians in the Territory

(l) Control of liquor and narcotics

(m) Schools and children

(n) The custody of alien property

(o) Collection and disposition of garbage, ashes, and other waste

(p) Banking, currency, and securities, provided that the Commanding General may prescribe the

(Testimony of Hon. Ingram M. Stainback.)

measures to be taken to prevent the enemy from obtaining securities or money or realizing upon them if he should obtain them

(q) Civilian defense activities, except that the Commanding General shall have jurisdiction to prescribe the duties of the Civilian Defense Corps, and to regulate and inspect their training

(r) Control of the supply, employment, hours, wages, and working conditions of labor, except as to (1) employees of the United States under the War Department or the Navy Department, (2) workers employed on construction and other projects under the War Department or the Navy Department, (3) stevedores and other workers employed on docks and dock facilities, and (4) employees of public utilities. It is contemplated that the Commanding General and the Governor of Hawaii by mutual agreement will appoint a joint advisory committee which shall from time to time consult and advise with each of them with reference to labor matters in their respective fields.

2. For the purposes of the defense of the Hawaiian Islands and for their preparation for use as a base for offensive operations, the Commanding General shall continue so far as he deems the military security of the Territory to require, to exercise full jurisdiction over all matters over which he now has jurisdiction except such as are resumed by civil authorities pursuant to paragraph 1 of this proclamation.

(Testimony of Hon. Ingram M. Stainback.)

3. Whenever the Commanding General, in the light of an existing military emergency or in anticipation of any military emergency, considers it necessary for the security of the islands or their use as a military or naval base, he shall have power, upon a written declaration of the existence or the anticipation of a military emergency, to exercise such of the functions and jurisdictions as are hereby or may hereafter be resumed by the civil authorities, or to issue such additional military orders, after consultation with the Governor of the Territory where civilian rights and the administration of the civilian government are affected, directing such action as in the judgement of the Commanding General may be required for the military security of the Territory.

4. Nothing in this proclamation shall operate to invalidate any conviction, or any application of military orders to persons or activities, or any other action, which occurred or shall occur prior to the thirtieth day hereafter.

5. I call upon all good citizens of the United States and all other persons within the Territory of Hawaii to obey promptly and fully, in letter and spirit, such orders as the Commanding General may issue under this proclamation and during the continuance of the state of martial law.

(Testimony of Hon. Ingram M. Stainback.)

Done at Honolulu, Territory of Hawaii, this .... day of January, 1943.

INGRAM M. STAINBACK,
Governor of Hawaii.

Approved

WARNER W. GARDNER
INGRAM M. STAINBACK
[Three signatures illegible.]

[Endorsed]: Filed 4-7-44.

RESPONDENT'S EXHIBIT No. 5-2

I hereby certify that the attached are true photostatic copies of letters and accompanying papers on file in the White House Office.

C. E. INGLING,
Chief of Files,
The White House Office.

I hereby certify that C. E. Ingling, who signed the foregoing certificate, is Chief of Files in the White House Office.

M. C. LATTA
M. C. Latta
Executive Clerk,
The White House Office.

(Testimony of Hon. Ingram M. Stainback.)

Respondent's Exhibit No. 5-2—(Continued)

The White House
Washington

[Marginal notes]: (400) Hawaii F x161

[Stamped] Feb 1 1943

My dear Mr. Secretary:

I have examined the proposed proclamation to be issued by the Commanding General Hawaiian Department, and the proposed proclamation to be issued concurrently by the Governor of Hawaii. I understand that the Departments of War, Justice, and Interior have agreed in this manner to resolve the difficult questions surrounding the administration of government in the Territory of Hawaii.

I wish to congratulate all the Departments concerned in their cooperative and successful efforts to reach an amicable solution of the knotty problems involved. In an area of such strategic importance as the Hawaiian Islands in a time of active war in the Pacific, I can readily appreciate the difficulty in defining exactly the boundaries between civil and military functions. I think the formula which this proclamation applies meets the present needs.

I know that General Emmons will do all that he can, consistent with his military responsibility, to refrain from exercising his authority over what are normally civil functions. I am confident that the military and civil authorities will cooperate fully. If an occasion should arise on which, after consultation with the civil authorities, the Commanding

(Testimony of Hon. Ingram M. Stainback.)

Respondent's Exhibit No. 5-2—(Continued)

General felt it necessary to take action under the provisions of paragraph 3, I should like to be informed of the circumstances under which such action was taken. I hope also that there will be a further restoration of civil authority as and when the situation permits.

Sincerely yours,

FRANKLIN D. ROOSEVELT

Hon. Henry L. Stimson, x25
Secretary of War.

[In manuscript]: Copy sent to Interior & Justice
Copy for White House Files

January 18, 1943.

Dear Mr. President:

We are pleased to report that after lengthy discussions the Departments of War, Justice, and Interior have reached an operating agreement upon the distribution of governmental functions between the civil and the military authorities in the Territory of Hawaii.

Pursuant to this agreement the Governor of Hawaii and the Commanding General will issue simultaneous proclamations. Their effect is to leave unchanged the state of martial law and the suspension of the writ of habeas corpus, to restore to the civil government the majority of civil functions hitherto exercised by the military authorities, and to provide emergency powers for the military government. Copies of the proclamations are enclosed for your information.

(Testimony of Hon. Ingram M. Stainback.)

Respondent's Exhibit No. 5-2—(Continued)

We also enclose a draft of a letter which we suggest you might appropriately send to the Secretary of War. It is designed, as you will observe, to reassure the civilian Departments that there will be no unnecessary resumption of the restored functions by the military authorities.

Very sincerely yours,

HENRY L. STIMSON
Secretary of War
FRANCIS BIDDLE
Attorney General x10
HAROLD L. ICKES
Secretary of the Interior x6

The President,
The White House.

Proclamation
U. S. Army
Headquarters, Hawaiian Department.
Honolulu, ..., 1943.

To the People of Hawaii:

I, Delos C. Emmons, Lieutenant General, United States Army, as Commanding General, Hawaiian Department, and as Military Governor of Hawaii, do hereby proclaim:

1. Full jurisdiction and authority are hereby relinquished by the Commanding General to the Governor and other officers of the Territory of Hawaii, to the courts of that territory, to the city and county of Honolulu, to other counties, to all other officers of the territory or other persons acting under its

(Testimony of Hon. Ingram M. Stainback.)

Respondent's Exhibit No. 5-2—(Continued)

authority, to the United States District Court for Hawaii, and to the appropriate officers of the United States, to exercise such powers as may now or hereafter be vested in them respectively by law over the following matters and others necessarily related thereto:

(a) Control of prices

(b) Rationing of commodities among the civilian population

(c) Control of hospitals, medical personnel, and medical supplies

(d) Food production by and distribution of food among the civilian population

(e) Control of rents

(f) Control of transportation and traffic by land, except the movement of troops, military supplies and equipment, and except that the Commanding General may prescribe rules for the traffic during blackout hours

(g) Public health, sanitation, and prevention of disease among civilians

(h) Licensing of businesses, regulation of hours of business, and types of forbidden occupations

(i) Judicial proceedings, both criminal and civil, except:

(1) Criminal prosecutions against members of the armed forces. Members of auxiliary armed forces shall be included within the term "armed forces" after induction into the service and also before induction in respect of any act

(Testimony of Hon. Ingram M. Stainback.)

Respondent's Exhibit No. 5-2—(Continued)

or omission certified by the Commanding General to be in the line of duty.

(2) Civil suits against members of the armed forces, as defined in subparagraph (1), in respect of any act or omission certified by the Commanding General to be in the line of duty.

(3) Criminal prosecutions for violations of military orders.

The Commanding General may waive the above exception with respect to any particular prosecution or suit, or any class of prosecutions or suits, thereby permitting such prosecutions or suits to be tried in the appropriate court of the territory or in the United States District Court for Hawaii, as the case may be.

(j) Control of imports for civilian consumption and exports by civilians within allotments of tonnage made by the Commanding General

(k) Censorship of mail from civilians in the territory

(l) Control of liquor and narcotics

(m) Schools and children

(n) The custody of alien property

(o) Collection and disposition of garbage, ashes, and other waste

(p) Banking, currency, and securities, provided that the Commanding General may prescribe the measures to be taken to prevent the enemy from obtaining securities or money or realizing upon them if he should obtain them.

(Testimony of Hon. Ingram M. Stainback.)

Respondent's Exhibit No. 5-2—(Continued)

(q) Civilian defense activities, except that the Commanding General shall have jurisdiction to prescribe the duties of the Civilian Defense Corps, and to regulate and inspect their training

(r) Control of the supply, employment, hours, wages, and working conditions of labor, except as to (1) employees of the United States under the War Department or the Navy Department, (2) workers employed on construction and other projects under the War Department or the Navy Department, (3) stevedores and other workers employed on docks and dock facilities, and (4) employees of public utilities. It is contemplated that the Commanding General and the Governor of Hawaii by mutual agreement will appoint a joint advisory committee, which shall from time to time consult and advise with each of them with reference to labor matters in their respective fields.

2. The Commanding General, Hawaiian Department, is charged with responsibility for the defense of the Hawaiian Islands and for their preparation for use as a base for offensive operations. For such purposes he shall continue, so far as he deems the military security of the territory to require, to exercise full jurisdiction over all matters over which he now has jurisdiction except such as are transferred to civil authorities pursuant to paragraph 1 of this proclamation.

3. Whenever the Commanding General, in the light of an existing military emergency or in anticipation of any military emergency, considers it nec-

(Testimony of Hon. Ingram M. Stainback.)

Respondent's Exhibit No. 5-2—(Continued)

essary for the security of the islands or their use as a military or naval base, he shall have power, upon a written declaration of the existence or the anticipation of a military emergency, to resume such of the functions and jurisdictions as are hereby or may hereafter be transferred to the civil authorities, or to issue such additional military orders, after consultation with the Governor of the territory where civilian rights and the administraton of the civilian government are affected, directing such action as in the judgment of the Commanding General may be required for the military security of the territory.

4. Neither this proclamation nor the revocation of orders announced in paragraph 5 hereof shall operate to invalidate any conviction, or any application of military orders to persons or activities, or any other action, which occurred prior to the effective date of this proclamation or such revocation.

5. This proclamation shall take effect thirty days after its date. Those parts of all military orders affecting the subjects enumerated in paragraph 1 hereof are hereby revoked effective thirty days after the date hereof.

DELOS C. EMMONS,
Lieutenant General, U. S.
Army, Commanding.
Military Governor of Hawaii.

(Testimony of Hon. Ingram M. Stainback.)

Respondent's Exhibit No. 5-2—(Continued)

By the Governor of Hawaii

A Proclamation

Whereas, the Governor of Hawaii by his proclamation of December 7, 1941, placed the Territory of Hawii under martial law, in exercise of his powers under section 67 of the Organic Act, which action was confirmed by the President of the United States on December 8, 1941; and

Whereas, a state of martial law remains in effect and the privilege of the writ of habeas corpus remains suspended;

Now, Therefore, I, Ingram M. Stainback, Governor of Hawaii, under the authority given by section 67 of the Organic Act, do hereby proclaim:

1. The Governor of Hawaii and the other civilian officers and agencies of the federal, the territorial and the local governments, will resume on the thirtieth day hereafter their respective jurisdictions, functions and powers, according to law, with respect to the following matters, and others necessarily related thereto:

(a) Control of prices

(b) Rationing of commodities among the civilian population

(c) Control of hospitals, medical personnel, and medical supplies

(d) Food production by and distribution of food among the civilian population

(e) Control of rents

(f) Control of transportation and traffic by land, except the movement of troops, military supplies

(Testimony of Hon. Ingram M. Stainback.)

Respondent's Exhibit No. 5-2—(Continued)

and equipment, and except that the Commanding General may prescribe for the traffic during black-out hours

(g) Public health, sanitation, and prevention of disease among civilians

(h) Licensing of businesses, regulation of hours of business, and types of forbidden occupations

(i) Judicial proceedings, both criminal and civil, except:

(1) Criminal prosecutions against members of the armed forces. Members of auxiliary armed forces shall be included within the term "armed forces" after induction into the service and also before induction in respect of any act or omission certified by the Commanding General to be in the line of duty.

(2) Civil suits against members of the armed forces, as defined in subparagraph (1), in respect of any act or omission certified by the Commanding General to be in the line of duty.

(3) Criminal prosecutions for violations of military orders.

The Commanding General may waive the above exception with respect to any particular prosecution or suit, or any class of prosecutions or suits, thereby permitting such prosecutions or suits to be tried in the appropriate court of the Territory or in the United States District Court for Hawaii, as the case may be.

(Testimony of Hon. Ingram M. Stainback.)

Respondent's Exhibit No. 5-2—(Continued)

(j) Control of imports for civilian consumption and exports by civilians within allotments of tonnage made by the Commanding General

(k) Censorship of mail from civilians in the Territory

(l) Control of liquor and narcotics

(m) Schools and children

(n) The custody of alien property

(o) Collection and disposition of garbage, ashes, and other waste

(p) Banking, currency, and securities, provided that the Commanding General may prescribe the measures to be taken to prevent the enemy from obtaining securities or money or realizing upon them if he should obtain them

(q) Civilian defense activities, except that the Commanding General shall have jurisdiction to prescribe the duties of the Civilian Defense Corps, and to regulate and inspect their training

(r) Control of the supply, employment, hours, wages, and working conditions of labor, except as to (1) employees of the United States under the War Department or the Navy Department, (2) workers employed on construction and other projects under the War Department or the Navy Department, (3) stevedores and other workers employed on docks and dock facilities, and (4) employees of public utilities. It is contemplated that the Commanding General and the Governor of Hawaii by mutual agreement will appoint a joint advisory committee

(Testimony of Hon. Ingram M. Stainback.)

Respondent's Exhibit No. 5-2—(Continued)

which shall from time to time consult and advise with each of them with reference to labor matters in their respective fields.

2. For the purposes of the defense of the Hawaiian Islands and for their preparation for use as a base for offensive operations, the Commanding General shall continue so far as he deems the military security of the Territory to require, to exercise full jurisdiction over all matters over which he now has jurisdiction except such as are resumed by civil authorities pursuant to paragraph 1 of this proclamation.

3. Whenever the Commanding General, in the light of an existing military emergency or in anticipation of any military emergency, considers it necessary for the security of the islands or their use as a military or naval base, he shall have power, upon a written declaration of the existence or the anticipation of a military emergency, to exercise such of the functions and jurisdictions as are hereby or may hereafter be resumed by the civil authorities, or to issue such additional military orders, after consultation with the Governor of the Territory where civilian rights and the administration of the civilian government are affected, directing such action as in the judgment of the Commanding General may be required for the military security of the Territory.

4. Nothing in this proclamation shall operate to invalidate any conviction, or any application of mili-

(Testimony of Hon. Ingram M. Stainback.)

Respondent's Exhibit No. 5-2—(Continued)

tary orders to persons or activities, or any other action, which occurred or shall occur prior to the thirtieth day hereafter.

5. I call upon all good citizens of the United States and all other persons within the Territory of Hawaii to obey promptly and fully, in letter and spirit, such orders as the Commanding General may issue under this proclamation and during the continuance of the state of martial law.

Done at Honolulu, Territory of Hawaii, this .... day of January, 1943.

INGRAM M. STAINBACK,
Governor of Hawaii.

[Endorsed]: Filed 4-7-44.

RESPONDENT'S EXHIBIT No. 5-3

United States (cut) of America
War Department
Washington, 22 March, 1944

I hereby certify that the attached copy of letter from the President, addressed to the Secretary of War, dated February 1, 1943, is a true and exact photostat copy made from an official record on file in this office.

H. A. GERHARDT
Harrison A. Gerhardt
Lt. Colonel, General Staff Corps, Executive to Ass't Secretary of War

(Testimony of Hon. Ingram M. Stainback.)

I hereby certify that Lt. Colonel Harrison A. Gerhardt, who signed the foregoing certificate, is the Executive Officer to the Assistant Secretary of War, and that to his certification as such full faith and credit are and ought to be given.

In testimony whereof, I, Henry L. Stimson, Secretary of War, have hereunto caused the seal of the War Department to be affixed and my name to be subscribed by the Assistant Chief Clerk of the said Department, at the City of Washington, this 22 day of March, 1944.

[Seal] HENRY L. STIMSON,
Secretary of War.
By J. C. COOK,
Assistant Chief Clerk.

War Department
Form No. 7

[Stamped]: Received War Department Secretary's Office 1943 Feb 2 AM 11:22

The White House
Washington
February 1, 1943

My dear Mr. Secretary:

I have examined the proposed proclamation to be issued by the Commanding General, Hawaiian Department, and the proposed proclamation to be issued concurrently by the Governor af Hawaii. I understand that the Departments of War, Justice, and Interior have agreed in this manner to resolve

(Testimony of Hon. Ingram M. Stainback.)

the difficult questions surrounding the administration of government in the Territory of Hawaii.

I wish to congratulate all the Departments concerned in their cooperative and successful efforts to reach an amicable solution of the knotty problems involved. In an area of such strategic importance as the Hawaiian Islands in a time of active war in the Pacific, I can readily appreciate the difficulty in defining exactly the boundaries between civil and military functions. I think the formula which this proclamation applies meets the present needs.

I know that General Emmons will do all that he can, consistent with his military responsibility, to refrain from exercising his authority over what are normally civil functions. I am confident that the military and civil authorities will cooperate fully. If an occasion should arise on which, after consultation with the civil authorities, the Commanding General felt it necessary to take action under the provisions of paragraph 3, I should like to be informed of the circumstances under which such action was taken. I hope also that there will be a further restoration of civil authority as and when the situation permits.

Sincerely yours,

FRANKLIN D. ROOSEVELT

Hon. Henry L. Stimson,
Secretary of War.

[Endorsed]: Filed 4-7-44.

(Testimony of Hon. Ingram M. Stainback.)

Respondent's Exhibit No. 5-4

United States [Cut] of America

War Department

Washington, 31 March 1944

I Hereby Certify that the attached copy of letter dated 1/18/43, relative to proclamations pertaining to governmental affairs in the Territory of Hawaii, is a true and exact photostatic copy made from an official record on file in the office of the Assistant Secretary of War, War Department, Washington, D.C.

HARRISON A. GERHARDT
Harrison A. Gerhardt
Lt. Colonel, General Staff Corps
Executive to Asst. Secretary of War

I Hereby Certify that Lt. Colonel Harrison A. Gerhardt, General Staff Corps, who signed the following certificate, is the Executive to Assistant Secretary of War, and that to his certification as such full faith and credit are and ought to be given.

In Testimony Whereof, I, Henry L. Stimson, Secretary of War, have hereunto caused the seal of the War Department to be affixed and my name

(Testimony of Hon. Ingram M. Stainback.)

to be subscribed by the Assistant Chief Clerk of the said Department, at the City of Washington, this thirty-first day of March, 1944.

[Seal] HENRY L. STIMSON
Secretary of War.

By J. C. COOK
Assistant Chief Clerk.

War Department
Form No. 7

[Penciled in margin]: File Copy W 370.8
Hawaii X. Emmons 1-18-43

Agreed Draft

My dear General Emmons:

As you have doubtless been informed by the Secretary of War, an agreement has been reached in Washington which calls for the simultaneous issuance of similar proclamations by you and by me. I understand that you have received from the Secretary of War both the proclamation which you are to issue and a copy of that which I am to issue. I suggest that we confer at your earliest convenience as to the date and the manner of issuance of these proclamations.

I undertook when in Washington to add by informal letter a particularization of my intentions as to several of the general provisions of the proclamations. These matters are:

1. Although, by paragraph 1(g) of the proc-

(Testimony of Hon. Ingram M. Stainback.)

lamations, control of "public health, sanitation, and prevention of disease among civilians" is restored to the civil government, I shall put into effect any measure which you determine to be necessary to prevent contamination by the enemy.

2. Paragraph 1(b) of the proclamations restores to the civil government control of "rationing commodities among the civilian population." In the administration of these functions, the civil authorities will respect any determination which you might make as to necessary reserves of food-stuffs, both as to amount and as to kind, which are to be held against an emergency.

Sincerely yours,

Governor of Hawaii.

Approved

WARNER W. GARDNER
INGRAM M. STAINBACK
W. FORTAS
[Illegible]
D. C. EMMONS

[Endorsed]: Filed 4-7-44.

By Mr. Ennis:

Q. Governor, in connection with your proclamation of February 8, 1943, is it your understanding of the language you used that it was to continue the suspension of the privilege of the writ so far

(Testimony of Hon. Ingram M. Stainback.)

as the officials concerned could do that under the law?

Mr. Anthony: Same objection, your Honor.

The Court: Read that question, Mr. Reporter.

(The Reporter read the question.)

Mr. Anthony: May I state to your Honor, I have no objection to the witness answering the question so long as it is perfectly understood that this is a question of law for this Court. That is the meaning of the proclamation; that we are at liberty to address your Honor as to what the proclamation means.

The Witness: Shall I answer that?

The Court: Overruled. You may answer.

The Witness: There is no question, we intended to continue to suspend the writ of Habeas Corpus for the time being. Naturally, I didn't expect to continue it indefinitely, because [535] in the statement of the General at that time he said they would gradually relinquish civil control as it could be taken up; but as far as the proclamation was concerned, there is no question as to what was in our minds at that time. Whether he expressed it artistically or purposely, I presume it is a question for the Court. But as far as my own question was concerned, we intended to keep the right suspended.

Q. And at the time you issued your proclamation, Governor, you made a public statement to that effect? A. Yes, I think I did.

Mr. Ennis: Your Honor, that is all the exami-

(Testimony of Hon. Ingram M. Stainback.)

nation I have of the Governor as the Respondent's witness. But I would for a moment like to go back to one question on the cross-examination, with your Honor's permission, unless Counsel has some cross-examination on this phase of the case.

The Court: You may do that, but before you leave this subject I want to get my mind clear as to what happened. I haven't examined these documents that were put in. I had no opportunity to do so. I have heard a statement of Counsel as to what they contained in substance. As I get it, Governor, in Washington you conferred with executives of the National Government, department heads of the Interior, officials at least of the Interior and the Department of Justice and War as to the subject of martial law and the suspension of the writ of Habeas Corpus here.

The Witness: Yes, your Honor. [536]

The Court: And after discussions you were not altogether in accord but you did come to an agreement, an understanding, a workable agreement, as you believed, and that was largely for the purpose of obviating the need of carrying the matter to the President for settlement, is that correct?

The Witness: That is true. Maybe I had better go back a little bit. I went back to Washington definitely for the purpose of obtaining the revocation of martial law. Under the Organic Act, the Governor declares martial law, but it contains approval of

(Testimony of Hon. Ingram M. Stainback.)

the President. I don't know what the law is on revocation, but I assume it is the same way: the Governor revokes it with the approval of the President. So my purpose in going to Washington—in fact, the matter had been discussed before my appointment as Governor—and I went back to obtain the revocation of martial law. I obtained part of it but not all of it. And this was a matter that they did not want to take to the President. All departments felt that he was heavily burdened at that time, and I think it was just before he went to Africa—I am not sure—but they didn't want to take departmental matters to him, and that they should be settled by the various departments.

This is the best settlement I could get, and I believe the Justice Department was aiding and abetting me at that time instead of the General. The War Department was adamant and they would not yield further than they did yield.

The Court: The War Department wanted martial law and [537] the suspension of the writ to prevail.

The Witness: That's right.

The Court: The Department of the Interior, what was their position?

The Witness: They wanted to revoke martial law entirely. Mr. Ickes was rather emphatic, although he didn't continue in many of the conferences, mostly the Attorney General and myself and Mr. McCloy.

(Testimony of Hon. Ingram M. Stainback.)

The Court: The Department of Justice was neutral?

The Witness: The Department of Justice, as I take it, were very much in favor of me, that is, I say "me" in my position, and expressed it rather forcefully in several of the meetings but apparently they couldn't persuade the War Department.

The Court: You had several discussions?

The Witness: Oh, we went from early December until, I think—this is dated the 20th of January (referring to notes)—and almost daily discussions, quite drawn-out. And after we had arrived at one settlement—not a settlement but a tentative agreement—then apparently this labor problem came up. And General Emmons returned to Hawaii and we had to go through the cable off and on as to what the General approved, and that took most of January, very extended discussions, very long, drawn-out, and I think everybody kept their temper more or less and discussed it good-naturedly with the idea of solving a very difficult problem. [538]

The Court: Well, the difficult problem was an economic problem here, as to labor?

The Witness: I say difficult problem, the difficulty was the stand of the War Department, and, as I understand, also the Navy Department, although the Navy Department took no part in these negotiations at all. But I think the War Department ascertained the wishes of the Navy Department. I understand they were very strongly of the opinion

(Testimony of Hon. Ingram M. Stainback.)

that labor should be controlled by the War Department or by the military, I should say, and that martial law should be continued in some form. In fact, I am quite sure the Navy Department was very much of that opinion.

The Court: Well, as a matter of practical expedience and convenience, is that it?

The Witness: To a large extent. And the matter of facing conditions here and adjusting ourselves here to conditions after having been under military government for a year, the question of upset of economic conditions of the Territory had to be very carefully looked into, and a great many matters of that sort. We didn't want to throw a monkey wrench into the existing set-up and disorganize the Territorial economic conditions any worse than that.

The Court: Well, during these discussions was the matter of the Constitutional provision that the Writ of Habeas Corpus shall not be suspended except during times of rebellion or invasion considered and discussed? [539]

The Witness: I don't think we went into any particular discussion of the legal end. It was a question of arriving at a practical settlement of an existing condition, and there was not much discussion of the law except at the first meeting, I think, the Attorney Genreal gave his opinion on the law, on some phases of it. But after that it was mostly this question of what the War Department deemed absolutely necessary for the protection of the Islands. I'll put it that way rather than the

(Testimony of Hon. Ingram M. Stainback.)

question of legality or matters of that sort; very little, in fact I think there was no discussion of law after the first meeting.

The Court: Well, was there any understanding as to how long that agreed arrangement should continue?

The Witness: Well, the very emphatic statement was made by General Emmons that he didn't want to exercise any civil powers and he certainly would get rid of all of it as quickly as he could with safety to the community, and we were all rather under the impression that very shortly the whole set-up would be abandoned—at least I was. I don't know what the impression of the Attorney General was, and others. Direct reference was made to part of that, that they would give it up later that is, the term Military Governor. And the Attorney General pointed out in the first meeting that there was no such thing in an American community, no such thing as Constitutional Government that applied to belligerant government. [540]

There was some statement made after we agreed. General Emmons wanted to retain that title for some reason or another for awhile. I opposed that because I said that Hawaii was an integral part of the United States and shouldn't be treated like a conquered country or a country in rebellion. The Attorney General argued with me and said: "What do you care what it calls itself?" Well, I said: "As long as the President doesn't recognize it, there is no official recognition; he can call himself

(Testimony of Hon. Ingram M. Stainback.)

Emperor Jones, as far as he wishes, as far as I'm concerned." So you will note in the letter the President addresses him as "Commanding General."

That's the only thing where they said it would be definitely dropped in a short time. The others would be dropped as quickly as it could be with safety to the Territory.

The Court: This proclamation that you promulgated on February 8, 1943, did you draw that or did your Attorney General draw it?

The Witness: That was a proclamation that was agreed to in Washington drawn mostly by Mr. Gardner of the Solicitor's Department and Mr. McCloy, I think, of the War Department; a good many others sitting in from time to time, but as draftsmen, I believe they were. Probably some attorney knew more about it, but I don't know whether Mr. McCloy attended all of the conferences. Mr. Gardner, when the proclamation began to take final form, was the chief draftsman at that time. So that was all agreed upon before I came back. I simply copied [541] the agreed form after my return to the Territory.

The Court: You brought the proclamation back with you?

The Witness: Yes, a draft of it.

The Court: How much time had elapsed between the time when you were helding these conferences and joined in the departmental agreement there before the proclamation was issued?

(Testimony of Hon. Ingram M. Stainback.)

The Witness: I left Washington in the latter part of January. I think these letters were dated the 18th or 20th. The proclamation was issued soon after my return, on the 8th of February, I believe is the date of it.

The Court: That's all.

Mr. Ennis: I have nothing more on this phase of the Governor's testimony.

The Court: Now, there were one or two questions that you wanted to revert to.

Mr. Ennis: Yes, unless you have some cross-examination on this phase.

Mr. Anthony: I'll take my redirect and cross at the same time. Go ahead.

HON. INGRAM M. STAINBACK,

Governor of the Territory of Hawaii, being previously sworn, testified for the Petitioner as follows:

Cross-Examination
(continued)

By Mr. Ennis:

Q. Governor, on your direct examination by Mr. Anthony [542] you testified that it was your opinion that there was no danger of invasion, imminent danger of invasion at this time?

A. That is correct.

Mr. Ennis: Now, at this time, with your Honor's permission I would like to repeat my question

(Testimony of Hon. Ingram M. Stainback.)

and request that the witness be allowed to answer the question as to whether, in his opinion, there was an invasion on December 7, 1941. Now, your Honor has already sustained an objection to that question, but I would like to make the point that the witness be allowed to testify as to his opinion as to the present time.

The Court: Yes, all right, you may ask that question.

The Wieness: I don't think there is any comparison between December 7, 1941, and the present. I talked to a great many officers, Army, Navy and Marine, a great many.

Q. I understand, Governor.

A. May I finish my answer in this way? At the present time I know there are certain submarines in these waters here to seek information.

Q. Well, now, Governor, I don't wish to interrupt you but I do think, your Honor, that the particular question is whether or not in the Governor's opinion—and he has told us what he has observed on December 7th—whether or not there was an invasion on that day? And if I may, I'd like to have that particular question answered. [543]

The Court: That largely runs to the question as to what the Governor considers the meaning of the term invasion. He has used that term in saying that he was quite sure there was no imminent danger of invasion now. And you are asking him if there was an invasion of the islands on Decem-

(Testimony of Hon. Ingram M. Stainback.)

ber 7, 1941. I think the question is fair. You may answer.

A. I have talked to and I do not disagree with the Admiral and the General. Of course, you can take out the weasel words. I think what they mean is that we have submarines here now.

Mr. Ennis: Well, your Honor, I object to what the Admiral's and the General's views are. I think we ought to get an answer to the question of what the Governor's opinion is on whether or not there was an invasion on December 7th.

A. I've got to explain that. Today there is no possibility of a repetition of December 7th.

Mr. Ennis: If your Honor please, I request that that answer be stricken as not responsive to the question of whether or not there was an invasion on December 7th.

The Court: I think the witness should be allowed to express it in his own way, to answer the question as to whether he considers there was an invasion December 7th.

A. In comparing it with today, I have to take it today; today I understand air raids can be made.

Mr. Ennis: I renew my objection, your Honor; the answer is not responsive. [544]

The Court: It may be. If it isn't at the finish, we will entertain a motion to strike.

Mr. Ennis: I take exception, please.

A. But because of our complete protection by antiaircraft today, I think any expert will agree

(Testimony of Hon. Ingram M. Stainback.)

the planes will be kept at such a height—they can come in but they could not get any targets with any accuracy like they did on December 7th. So, as far as I am concerned, you can consider December 7th invasion, and yet I still say there is no imminent danger of invasion today because they could not possibly have a repetition of coming right in on top of the targets with the planes that came in December 7th. Of course, we thought there was invasion on December 7th. There was a radio announcement that paratroopers were landing here, there, and everywhere else. But as to whether that constitutes invasion, I don't think there could be any repetition of that, and I think any officer that knows anything about our air protection here will tell you that the planes might get in but they will be kept at such altitudes that they could not possibly deal with any accuracy on targets in the Territory. I have that on the very highest authorities from numerous sources.

So regardless of whether that was an invasion or not, I don't think that invasion could occur today. I don't know whether I am making myself clear but I've got to make that comparison to say now that I still maintain that there couldn't [545] possibly be any imminent danger of invasion today.

Q. Well, now, Governor, do I understand that your answer to my question is that there was an invasion on December 7, 1941?

A. I am not prepared to pass on the legality of

(Testimony of Hon. Ingram M. Stainback.)

whether the Court would hold that as invasion or not. My description of invasion is where troops land to take possession. And from that stand point I don't think there is the slightest danger of invasion. I think that there possibly may be, from all the people that I talked to, a raid, that is, a bombing of this Territory. It could be done; they couldn't stop it; they do it in London. if they are willing to make the sacrifice. But they would be kept so high that there could be no accuracy of bombing, and probably most of the bombers would come to grief. I understand we are very heavily fortified here in that respect.

Q. Well, of course, Governor, I understand your view as to the situation today. I apppreciate that. But what I wanted, if I could get it, was an answer to the question of whether or not, in your view, there was an invasion on December 7, 1941?

A. I would say there was imminent danger of invasion at that time, and I would have certainly declared martial law. I wouldn't think it would be necessary to pass on the legal problem whether there was a technical invasion or not. [546]

Q. Well, apart from the legal problem, which I am sure the Court will deal with adequately—the statute, Section 67, uses the words "invasion or imminent danger thereof"—now, couldn't you express an opinion as to whether what you observed——

A. I would request the Attorney General to express an opinion on the legality, but I certainly would declare martial law on the prime situation

(Testimony of Hon: Ingram M. Stainback.)

that we had imminent danger there. I wouldn't argue on the question of splitting hair as to whether we were invaded or not.

Q. Well, Governor, I don't ask you for a legal opinion.

A. I was not Governor at that time and I did not in any way pass on the question. If it would come before me in Court, I might have passed on it, but I hadn't taken testimony. But I would sustain it if I had been Governor, I would sustain it on the question of imminent danger.

Q. But on the question of invasion and imminent danger thereof, that is not only a legal question but in any community and to a Governor it is more vitally a factual question. Couldn't you answer from what you observed and from what you know, living in the community and being a Federal Judge, as to whether or not there appeared to be an invasion on December 7th?

A. It certainly appeared to be invasion. And it happened. There is no question about that. We certainly acted on that assumption. [547]

Q. Wouldn't you say there was an invasion?

A. Actually it turned out there was no invasion but just the sinking of our fleet.

Mr. Ennis: That is all. Thank you.

Redirect Examination

By Mr. Anthony:

Q. Governor, your views as to the imminence of invasion and the requirement that the privilege of the Writ of Habeas Corpus be suspended, they

(Testimony of Hon. Ingram M. Stainback.)

have been the same for the year 1943 and the entire year 1944? A. Yes.

Q. In our direct examination by Mr. Ennis in regard to the proclamation, you made reference to relinquishment of civil authority. That was agreed upon and so expressed in the document?

A. Yes, it was agreed that gradually there would be relinquished civil authority to the civil government.

Q. From and on March 10, 1943, what has been the course of events?

A. Nothing has been relinquished as far as I know, and we have taken no action. I have conferred with General Richardson a couple of times to try to get a working agreement. I might state, your Honor, we haven't been having any fights over this situation. I don't want to appear—General Richardson and I are on the friendliest terms and I try to cooperate with him, [548] and I am sure he has tried to cooperate with me, and my suggestions in Government have been as much to aid him as to aid the people of the Territory. I'm probably put in a little false position here on some of these answers and questions.

Mr. Anthony: No further questions.

Mr. Ennis: Well, I think perhaps I should state, as the Governor did, that my department, the Department of Justice, and the Attorney General, we want to make it perfectly clear that whatever our obligations are as an administrative department of the Government in helping work these things out

(Testimony of Hon. Ingram M. Stainback.)

administratively, of course my position here, as a representative of the Attorney General, is to defend any Federal Government officials who are sued by a private party; and with the Governor I merely wanted to bring out as clearly as I could the actual facts of the matter. And I think that the Governor will agree that the Department of Justice and the Department of the Interior work very closely together on these matters, and on administrative matters—we deal very closely on them. But when any Federal official is sued, indeed, if the Governor is sued in connection with some other aspects of this matter, we might very well in defending him take a position somewhat different from the position we now take. But we defend every department of the Government. I think in cross-examining the Governor that it is fair that I should state that on the record. I think the Governor understands that. [549]

The Witness: I have no kick, Mr. Ennis. I'm glad to hear you defend me if I get in trouble.

The Court: I think that is all.

(Witness excused.)

The Court: We'll take a recess at this time.

(A recess was taken at 10:31 a.m.) [550]

After Recess
(10:50 a.m.)

Mr. Ennis: May we proceed?
The Court: Yes.

ROBERT ROAN,

a witness in behalf of the Respondent, being duly sworn, testified as follows:

Direct Examination

By Mr. Ennis:

Q. Will you state your full name and your occupation?

A. My full name is Robert Roan. I'm Police Sergeant, Navy Yard Police Department.

Q. Were you on duty on the night of February 24th, 1944, at 10:00 p.m.? A. Yes, I was.

Q. Where?

A. I was in the housing area, one and two.

Q. Will you state in your own words the circumstances under which you talked to and observed Corporal Bowerman of the Marine Corps at the Pearl Harbor gate?

Mr. Anthony: I object to this as incompetent, irrelevant and immaterial, your Honor; and at this time I would like to raise the question to the Court as to the admission of a large amount of wholly irrelevant testimony in this case, and I now move to strike it, namely, the testimony of Corporal Bowerman, the Provost Court reporter, and any other witness as to that transaction. That [551]

(Testimony of Robert Roan.)

evidence, in my judgment, has no place in a habeas corpus proceeding at all. The only thing that is in issue here is the jurisdiction of the Provost Court. And I would like to argue that at length in this Court, as to whether or not that evidence should be in this case.

The Court: Well, I understood that there would probably be a motion made by the Respondent to strike certain of your evidence along those same lines. I had thought that we might take that up at some convenient time, any time convenient to both of you. I'd like to hear you on it. Now, this doesn't seem to be appropriate just at this instance. You combined two matters there together.

Mr. Anthony: Very well, your Honor, so long as I may still be at liberty to strike that evidence and argue fully before your Honor on that subject.

The Court: Read the question.

(The Reporter read the last question.)

The Court: Just a minute. I don't see the materiality or the relevancy of that.

Mr. Ennis: Well, your Honor, this line of testimony was only offered after witnesses called by the Petitioner, including Weities, were called, over the Government's objction, to testify as to what occurred on this occasion. Now, I think that the record contains the Petitioner's view of what occurred on that occasion, and that the Respondent should be allowed by other witnesses to show what occurred on that occasion. I have only a couple of questions to [552] ask the officer.

(Testimony of Robert Roan.)

The Court: Well, you may go ahead, but I am almost convinced that all that line of evidence should come out.

Mr. Ennis: I will make it very brief, your Honor. (To witness): Will you answer that?

The Court: Subject to a motion to be struck then. Go ahead.

The Witness: Well, on arriving at the main gate during this call for the scuffle, when I arrived there I asked Corporal Bowerman what the trouble was, and I noticed he had a handkerchief in his hand and he was holding it to his mouth, and he said somebody had slugged him, and this man on the bench——

Mr. Anthony: Additional evidence is hearsay, and I move to strike the witness' testimony.

The Court: Sustained.

Mr. Ennis: Will you just tell us, Officer Roan, what you saw on that occasion? You saw Corporal Bowerman standing with a handkerchief, with his lip bleeding?

A. Yes, sir, I saw Corporal Bowerman.

Q. What else did you see?

A. And I saw he had a lump over one eye; I think it was his left eye; and I told him why he didn't go to the dispensary, and he said he'd have to wait until the Civil Police came, and——

Mr. Anthony: Just a minute. I object to the hearsay testimony and ask that it be stricken.

Mr. Ennis: Officer Roan, don't state what somebody else said; just what you saw and whom you saw and what you said.

(Testimony of Robert Roan.)

A. Well, after I saw Corporal Bowerman I saw this workman [553] sitting on this bench.

Q. Do you see him in Court, the one you saw?

A. Yes.

Q. Will you point him out?

A. This one. (Indicating Petitioner.)

Q. The Petitioner sitting at the table here?

A. Yes, sir. Well, when I found out what the trouble was, I asked for the man's badge and his name, and he gave me his name and his badge. And when he was going to turn this badge to me, this workman got up and started to grab for the badge, and I said, "You sit down and I'll take care of the badge." And he said, "All right, Sergeant, being as you're going to take it, I'll sit down." And he sat down. So I called the Sergeant on duty of the Guard to come with the wagon and take him to the yard.

Q. You did? A. Yes, sir.

Mr. Ennis: That's all.

Mr. Anthony: You got the badge?

The Witness: Yes, sir.

Mr. Anthony: That's all.

(Witness excused.)

Mr. Anthony: I think the record should show, your Honor, that all of these witnesses that have been testifying have been in the Courtroom during the other testimony and during the hearing on this case.

Mr. Ennis: On both sides. Counsel discussed it,

and as far as we were concerned, we had no objection. [554]

The Court: Very well, there has been no ruling asked for.

JAMES C. HUNTER,

Private First Class, U.S.M.C., a witness in behalf of the Respondent, being duly sworn, testified as follows:

Direct Examination

By Mr. Ennis:

Q. Will you state your full name and present occupation?

A. James C. Hunter. I'm a sentry at the main gate.

Q. Main gate where?

A. At Pearl Harbor.

Q. You are in the Marine Corps?

A. That's right, sir.

Q. How long have you been a sentry at the main gate?

A. Since last July; it will be a year this July.

Q. It will be a year this coming July?

A. That's right, sir.

Q. What are your duties there?

A. To check identifications coming into the yard and to take cameras and liquor or anything that isn't allowed to come into the yard, to check it, pick it up.

Q. Speak louder.

A. Pick up property passes leaving the yard,

(Testimony of James C. Hunter.)

people taking property out of the yard and having authorization to take it out, why to be picked up, to see to that, to keep order.

Mr. Anthony: You'll have to lift up your voice.

[555]

A. To keep order in the section.

Q. You were a witness at the Provost Court trial of Lloyd Duncan on March 2, 1944?

A. Yes, sir.

Q. I show you Respondent's Exhibit 1 in evidence and ask you to examine the transcript of your testimony on that occasion, which it purports to contain. Will you read that and then tell the Court whether that is a complete and accurate transcript of your testimony as you recall it? Just read it and take your time. (Handing witness a typewritten document.)

A. Yes, sir, that is the statement I made out.

Q. Is that a complete statement of the testimony you gave? A. That's right, sir.

Q. And it is an accurate statement?

A. Yes, sir.

Mr. Anthony: My objection runs to that entire line, is that understood, subject to the motion to strike?

The Court: Yes.

Q. Now I request you to examine Duncan's own testimony and state whether, according to your best recollection, that is a complete and accurate statement of what he said?

A. Yes, sir, it is the same statement as he made.

(Testimony of James C. Hunter.)

Q. Is that a complete and accurate statement of what he said, as you recall it? A. Yes, sir.

Q. Going back to the incident itself on the evening of [556] February 24th—and, of course, your Honor, subject to the motions which both sides have now suggested in respect to the testimony about the incident—will you state briefly to the Court, as you recall it, what happened at that time. And lift your voice up so we can hear you.

A. Well, I was checking automobiles that entered the yard, and this Duncan and Weities and Bowerman were standing beside me and they were arguing about transportation to Weities' ship. And this Duncan come over and asked me what he was going to do with Weities, and I told him that I didn't have time to talk to him, that Bowerman would handle it. And I went ahead checking the cars coming into the yard. And then the next thing I knew they were scuffling over there. Bowerman put him under arrest, and asked him for his badge, and Duncan told him he didn't have to give him his badge. And so Bowerman reached up to take his badge, and Duncan took a swing at him, and this is when I went over. And Bowerman grabbed a hold of his arm and I went over and took hold of his other arm, and we set him down. And Duncan, while he had a hold of him, Duncan loosed one arm.

Q. I don't hear you.

A. While we had a hold of him, Duncan broke loose with one of his arms and struck Bowerman,

(Testimony of James C. Hunter.)

and he was kicking when he was sitting him down; he kicked me in the shins and hit me on the face.

Q. He struck whom a blow on the face?

A. He struck me a light blow with his arm, and he struck Bowerman I don't know how many times. [557]

Q. Did you see any of the effects of the blows he struck Bowerman?

A. Yes, sir. Bowerman had a gash under one of his eyes, and his lips were swollen, his lips were bleeding. So Bowerman went in to call a civilian, to call the civilian cops, and while he was calling civilian cops he told me to stay there and watch him. And while I watched him I was away from my post as a regular sentry, and Bowerman called this civilian cop and Duncan started swearing and saying he was going to kill us. So Bowerman brought out his club and he told him to be quiet, and Duncan sat down and he never said nothing else. We moved him over on the side and the civilian cops came then. That's about all.

A. That's about all? A. Yes.

Mr. Ennis: That's all.

Cross-Examination

By Mr. Anthony:

Q. Did Bowerman hit Duncan with a club?

A. No, sir.

Q. What did he do, just shake the club?

A. No, he picked up the club and came over towards him, and he never got within five feet of Duncan outside of the shack. The shack was closed

(Testimony of James C. Hunter.)

with glass and Duncan was sitting in the bench adjoining the shack where the glass is.

Q. Did you tell that to the Provost Court? [558]

A. I'm not sure whether I did or not, sir.

Q. You testified down at the Provost Court that Bowerman had a cut lip and a black eye, did you?

A. I don't think I did. I don't know whether they asked me or not. If they did, I probably did.

Q. Well, now, I'm asking you what you testified to?

A. I'm not sure whether I said that or not. I'm not sure.

Q. You're not sure whether you testified to that?

A. I testified that he did strike Bowerman.

Q. But how about the black eye and the bleeding lip?

A. He had no black eye but he had a gash under his eye.

Q. And you testified to that? A. Yes, sir.

Q. And you testified to the bleeding lip?

A. No, I never said anything about a bleeding lip, I don't believe.

Mr. Anthony: That's all.

(Witness excused.)

GENE A. TRINI, Lieutenant, U. S. Navy,

a witness in behalf of the Respondent, being duly sworn, testified as follows:

Direct Examination

By Mr. Ennis:

Q. Will you state your full name and occupation?

A. Gene Trini, Legal Aid to the Captain of the Yard and Provost Prosecutor of the Navy Yard.

[559]

Q. Navy Yard at Pearl Harbor?

A. Yes, sir.

Q. Lieutenant Trini, you were the Prosecutor—— A. In this Duncan case.

Q. In the Provost Court Duncan case with which we are concerned here? A. Yes.

Q. Do you recall a conversation with the Petitioner's brother after the prosecution?

A. Yes.

Q. Will you state the substance of that conversation as you recall it?

A. Well, he came into the Courtroom and I was called by the Court Clerk to meet Mr. Duncan, the smaller of the two who came in to visit me. And we discussed—he asked me the question of the possibility of having the case reviewed and as to the facts of the case, and so we talked back and forth about the case.

Q. Was that before or after the trial?

A. That was after the trial, I imagine about a week after the trial. He asked me about the evi-

(Testimony of Gene A. Trini.)

dence and the facts, and if there was any possible chance of getting the case reversed, etc. And I told him on the facts I thought not, that the case was presented and that the Judge decided there would be just like a jury deciding on a question of facts and they would not be overturned unless they could find out that it was against the preponderance or the weight of the evidence, or something about that sort. And [560] then he said about the possibility of the right of attorney. I said that the Court asked his brother if he desired Counsel. And then he stated about not having food when he was incarcerated there in the jail from the night of the 24th until released, I think, around three or five o'clock on the 25th. And I said I knew nothing of that, the reason why he didn't get food. And I later checked and found out that he was offered food but he did not desire it.

Q. Did you have any discussion with the Petitioner's brother about what procedure he might follow to have the sentence reconsidered?

A. Yes, I told him to go up to the O.M.G. office and see Colonel Morrison and introduce himself and make himself known and tell the Colonel what case he is interested in. And then when the case comes up, why they would know that he is interested in the case. And I also told him to get a lawyer, and he said he had a lawyer in mind, and he had the Attorney General in mind, and he had friends. So I didn't proceed any further as to the possibility of the question of getting Counsel.

(Testimony of Gene A. Trini.)

Mr. Ennis: That's all.

Mr. Anthony: No questions.

(Witness excused.)

Mr. Ennis: I have one more witness on this aspect of the case, your Honor, but he doesn't appear to be here just now, so I will call one witness on another aspect. Captain Wickhem. [561]

J. FRANK WICKHEM,

Captain, U. S. Army, a witness in behalf of the Respondent, being duly sworn, testified as follows:

Direct Examination

By Mr. Ennis:

Q. Captain Wickhem, will you state your full name and your present occupation?

A. Frank Wickhem. I am a Captain in the Army of the United States.

Q. What is your present position, your present duties?

A. I am assigned to duty with the Office of the Military Governor, and as a part of those duties I have the duties of the Provost Court Commissioner for the Territory of Hawaii.

Q. What did you do before you came into the Army and when did you come in?

A. I came in October 1st, 1942, and I was a practicing lawyer.

Q. Where?

A. At that time in Los Angeles, California.

(Testimony of J. Frank Wickhem.)

Q. How long have you been admitted to the bar?

A. I have been admitted to the bar since 1927.

Q. In California?

A. No, I was first admitted to the bar in the State of Wisconsin, after having graduated from the University of Wisconsin; then in the State of South Dakota, where I practiced until 1939, and then in the State of California.

Q. What duties are assigned to you in connection with your [562] assignment to the Office of the Military Governor?

A. Particularly the duties of the Provost Court Commissioner.

Q. What are those duties?

A. The duties of the Provost Court Commissioner are to coordinate the courts, that is, to see that the various Provost Courts operate under the same policy, to recommend and to help establish policy, to watch questions of jurisdiction, as to whether or not the Provost Courts have jurisdiction of certain offenses or whether they shall go to civilian courts, and to make recommendations and to initiate policies for the operation of the courts.

Q. Will you state very briefly for the Court how the Provost Courts do operate?

Mr. Anthony: I object to that as immaterial, your Honor. I don't see that that has any relevance.

Mr. Ennis: Well, if the Court please, Counsel is attacking the operation of the Provost Courts. It seems to me that it has some pertinence to the dis-

(Testimony of J. Frank Wickhem.)

cussion to know just what its jurisdiction is and how the Court operates. I think the Court will be helped by having some presentation of what the Provost Courts are rather than considering the question of their operations in vacuo without any discussion by the persons who are running them.

Mr. Anthony: Does Counsel intend to review the entire history of the Provost Courts, the number of quarts of blood impounded and bonds and dollars and fines and things of that nature that have been imposed upon the community? I don't know. I'm willing to go into it if the Court feels that there is any relevance [563] in it. I don't see any relevance to it.

Mr. Ennis: I think that the present operation of the Courts, their methods of procedure, should be very briefly described in Court. I don't have in mind the statistics, the summary of all the fines that they imposed.

The Court: Well, it seems to me that the thing more pertinent is, Where did the Provost Courts come from, in what manner and by what authority were they created?—rather than just how they operate at the present time.

Mr. Ennis: I'd be glad to have the witness explain that to the Court.

Q. Would you first explain, Captain Wickhem, upon what authority the Provost Courts operate here?

A. When martial law was declared in the Territory of Hawaii, one of the first general orders

(Testimony of J. Frank Wickhem.)

which was issued—I don't know which one it was, I think it was General Orders No. 2—established Provost Courts and established their jurisdiction, and then named the particular Judges who were to sit as Provost Courts. Now, my understanding as to the authority is the inherent right of an executor or a military commander to establish tribunals to enforce the general orders which are initiated under martial law.

Q. And at present the Provost Courts operate under such general orders? A. That's right.

Q. Will you now state very briefly——

The Court: May I stop you for a minute? Provost Courts are not any regular part of the Army organiaztion, is that so? [564]

The Witness: Yes, they are, Judge. The Courts-Martial Manual, the Manual of Courts-Martial itself, in Article 15 of the Articles of War, recognizes the existence of Military Commissions in Provost Courts.

The Court: And just in those words, that is all?

The Witness: As to jurisdiction.

The Court: Without any definition as to what they are or how they are created, isn't that so?

The Witness: Yes, to my knowledge that is the only reference in the Manual of Courts-Martial.

Mr. Anthony: That's all covered by their own rules, your Honor. It's very clearly covered in the official publications of the U. S. Army, in Field Manual 27-5 and also in The Rules of Winter Warfare.

(Testimony of J. Frank Wickhem.)

The Court: They have been referred to but they haven't been put before the Court.

Mr. Anthony: Well, that is a matter of law, your Honor, which I can argue. I don't think that we need to take our law from the witness on the stand.

The Court: I understand that, but without a background as to what a Provost Court is or intends to be or thinks it is, it is certainly irrelevant just how it operates.

Mr. Ennis: Well, your Honor, as I understand it, the witness has stated under what authority the Provost Courts here in Hawaii, which we are interested in, do operate. Now I think the history [565] of the Provost Courts is probably a matter for legal argument. And I am sure the opposing Counsel will trace the history in his argument. But what I had in mind for Captain Wickhem to tell us is how, in fact, the Provost Courts operate here.

The Court: The objection is overruled, subject to a motion to strike all this testimony.

Q. Will you state now, Captain Wickhem, briefly what procedure is used in the operation of the Provost Courts?

A. Well, the Provost Courts, under the jurisdiction as now set out in General Orders No. 2, have certain specific portions of jurisdiction to operate in; that is, they enforce all of the General Orders. They have jurisdiction of the Armed Forces for traffic violations, either day or night; jurisdiction of all of the civilians only during

(Testimony of J. Frank Wickhem.)

hours of darkness and blackout. The actual operations of the Court, that is, the manner in which a violation is brought to the attention of the Court, is through three enforcing agencies: the Shore Patrol, the Military Police, and the Civil Police. If a violation occurs, a citation is given by one of those agencies to the violator and he is requested then to appear, or summoned to appear at the Police Station within 48 hours for booking.

The Court: What police station?

The Witness: Your Honor, either Honolulu, if the violation occurs in the vicinity of Honolulu, or if it is in the vicinity of Aiea or in the vicinity of Kaneohe Police Station——

The Court: Well, the City and County Police Station, the [566] Civil Police Station?

The Witness: Yes, the Civil Police Station. Upon his appearing and being booked, the charge, the information sheet, is sent over to the Provost Court. That's written up by the Civil Police Officers or by the Military Police or by the Shore Patrol, as the case may be, and then a charge is drawn. That charge is signed by the Prosecutor and its verification taken by an Army Officer, ordinarily the Judge. The defendant is brought into Court; he is arraigned; he is given the right to Counsel; he is informed that he has the right to the issuance of subpoena; he can bring his own witnesses or, if they are not available that he has the process of the Government to bring his wit-

(Testimony of J. Frank Wickhem.)

nesses in for him. Then we proceed to the trial, if the defendant is ready for trial and he acknowledges being ready for trial. The rules of evidence are adhered to in a Provost Court. Incidentally, the men who are sitting as Judges in the Provost Courts at the present time, all of them in civil life were practicing lawyers with the exception of two, your Honor, one on the Island of Lanai and the other is Colonel Dupree, who is a regular Army Officer, but he has had experience in the Legal Department of the Army.

After the case is heard, the Court makes its decision. And after that decision is made then the particular Judge who is hearing the case loses jurisdiction after that particular day. The record is sent to the Office of the Military Governor, where every case is given a review by officers in that department. Applications for clemency, in cases where the defendant feels [567] that the penalty has been excessive, can be addressed to the Military Governor or given consideration or acted upon in that department.

That briefly, Mr. Ennis, is the operation of the Courts.

Q. In connection with the reconsideration, or the review, rather, by the Office of the Military Governor, is it possible to obtain a new trial or is the redetermination made just there?

A. It is possible to obtain a new trial to this extent that it is my understanding that the Office of the Military Governor, in those cases, can cut

(Testimony of J. Frank Wickhem.)

any sentence or can remit any fine; it can do anything it wants to on its own motion, and to my knowledge that action has been taken in many cases.

The Court: And a new trial held?

The Witness: No, I don't recall that a new trial has been granted, but, on the other hand, I don't know of any instance where that has been asked for.

Q. You stated that jurisdiction over civilians on offenses after nightfall—you were referring to traffic offenses?

A. Yes, to traffic offenses. I noticed that omission.

Q. Do the Provost Courts prosecute any civilians on offenses not connected with blackout and similar military security regulations?

A. To my knowledge, all of the General Orders now in effect are essentially security regulations. And a civilian would be prosecuted for a violation.

Mr. Anthony: That is just his conclusion of the law; that is [568] all we are getting from this witness, your Honor.

The Witness: May I proceed?

The Court: Yes.

Mr. Anthony: What his understanding of the orders are I think that I am competent to address the Court on that.

Mr. Ennis: I am asking the witness what the cases actually are that were prosecuted in the Provost Courts.

(Testimony of J. Frank Wickhem.)

The Witness: Any violation of a General Order. And those are General Orders which are sometimes not connected with traffic or blackout.

Q. Have you prepared a summary of the kind of cases that now occur in the Provost Courts and the volume of business?

A. I have, for one month, at your instance, Mr. Ennis.

Q. Have you got that summary with you?

A. I have.

Q. Would you get it, Captain? For what month did you have it prepared?

A. The month of February, 1944.

Q. And what are the statistics of the Provost Courts' activity for that month?

A. This, Mr. Ennis, is the Provost Court at Honolulu, just one Court; in that month there were 1,453 cases that came before the Court. Do you want to know the type of cases? I have them.

Q. Yes, generally.

A. For example, I will read them as they go. They are mostly speeding cases, blackout cases, those which are not speeding [569] are blackout; fraudulent entry into a military area, smoking aboard ship, failure to report military service, parking in a restricted waterfront area, making false statements, absenteeism.

Q. How many convictions?

A. Convictions: 819.

Q. What other categories make up the 1,453?

(Testimony of J. Frank Wickhem.)

A. Of those 1,453 that came before the Court—when I say "came before the Court" that isn't quite a correct statement because of those there were 519 blackout forfeitures. There were 36 traffic forfeitures; 79 cases were dismissed.

Q. Explain what blackout and traffic forfeitures are?

A. Well, it is the policy of the Provost Court that for a first offender who is guilty of being out after curfew, he can put up $5.00 and forfeit it without appearing in Court. If you are riding in a vehicle after curfew, if you put up $10.00 you can forfeit a bail of $10.00.

Q. Was this summary prepared under your direction as the Commissioner of the Provost Court?

A. It was.

Q. And it is an accurate summary and statistical survey of the business for the month of February, 1944?

A. To the best of my knowledge it is.

Mr. Ennis: I offer this in evidence, your Honor, as Government's Exhibit 8, Respondent's Exhibit 8.

The Clerk: Six.

Mr. Ennis: Oh, yes, six. [570]

The Court: That may be received in evidence as Exhibit six. That is what? What do you call it?

The Witness: It is a summary of the business that went through the Provost Court at Honolulu for the month of February, 1944.

(Respondent's Exhibit "No. 6" was received in evidence.)

(Testimony of J. Frank Wickhem.)

RESPONDENT'S EXHIBIT No. 6

SUMMARY OF CASES IN PROVOST COURT FOR THE MONTH OF FEBRUARY 1944

Nature of Cases		Number
GO 8, 2.05	Fraudulent entrance in military area	1
GO 7, 9.01	Smoking aboard ship	2
GO 8, 9.01	Failure to report military service	1
GO 7, 8.05	Parking in res. waterfront area	1
GO 2, 3.03	Contempt of Court	8
GO 9, 13.01	Filing cable w/o approval	1
GO 9, 14.02	Making false statements	1
GO 3, 4.05	Blackout speeding	186
GO 3, 4.06	Blackout parking	276
GO 3, 2.01	Blackout-lights	62
GO 3, 4.02	Blackout—pedestrian	111
GO 3, 4.04	Blackout—vehicle	38
GO 10, 6.02	Absenteeism	51
1258 RO	Speeding	11
6280 RL as am	Heedless & Careless	11
2/234/SL'37 14/234/SL'37	Driving w/o Lic: Not having on person, etc.	12
1313 RO	Unlawful manipulation of levers	1
1214 RO	Going thru red light	5
1240 RO	Following too closely	11
1276 RO	Right of way to ped	1
1239 RO	Driving left of center line	1
1238 RO	Illegal overtaking	2
1325 RO	Failure to make hand signal	1
1544 RO	Disregarding stop sign	1
1213 RO	Failing to obey signal	2
1245 RO	No right of way	5
1261 RO	Drunk Driving	2
1304 RO	Defective brakes	1
1233 RO	Driving on wrong side of road	2
1236 RO	Overtaking another vehicle	1
1250 RO	Unlawful backing	1
1243 RO	Illegal left turn	1
1241 RO	Turning at intersection	1

(Testimony of J. Frank Wickhem.)

Nature of Cases		Number
1246 RO	Failure to yield right of way	5
1284 RO	Failure to remain at scene of accident	2
	Total	819

RECAPITULATION

1.	Convictions	819
2.	Dismissals	79
3.	Blackout Forfeitures	519
4.	Traffic Forfeitures	36
	Total Cases	1453

Additional Information

1.	Suspensions	182
2.	Alien Cases	21
3.	Philippine Nationals	55

[Endorsed]: Filed 4-7-44.

The Court: Is that the only month in which you kept such a record?

The Witness: The only month in which the figures were compiled, your Honor. The records are kept for every month.

The Court: How do these cases of traffic offenses get into that Court, the traffic violations and blackout violations?

The Witness: By citation by the Police Officers, your Honor.

The Court: What do you mean by "Police Officers?" It appears to me that there are two

(Testimony of J. Frank Wickhem.)

classes of police officers. We had a police officer on the stand here awhile ago, this morning, a civil policeman who had something to do with the arrest and presentation of the case before the Provost Court at Pearl City. That police officer apparently didn't belong to the regular Territorial or city and county police.

The Witness: That's true, your Honor. Inside the Pearl Harbor Navy Yard the civil police officers are the enforcing agency with the marines.

The Court: Well, then, you've got a kind of a provost marshal police force, haven't you?

The Witness: Yes, your Honor. [571]

The Court: Well, how many different varieties of police are there?

The Witness: Well, as I said, in the City of Honolulu the enforcing agencies there, your Honor, are the Military Police, the Shore Patrol, and the Civilian Police of the City and County of Honolulu. The Civilian Police referred to in the Duncan case are those who operate, the Civil Service Police who operate only in the Pearl Harbor Navy Yard.

The Court: But the regular City and County Police Officers, when they get a traffic violation at any time, they route the case or someone routes it? Who does that? They do?

The Witness: That's done in the traffic division of the Police Department, Sergeant Camacho.

The Court: By what, by some military order?

(Testimony of J. Frank Wickhem.)

The Witness: By the orders of his superior, the Chief of Police, your Honor.

The Court: The regular civil police officers make arrests for blackout violations?

The Witness: Yes, sir.

The Court: How does that get into the Provost Court?

The Witness: That goes to a different department in the receiving desk at the civil police department, and that in turn routes it to the Provost Court.

The Court: Not all cases, just some go here and some go there?

The Witness: All cases of traffic or blackout, your Honor, during the hours of blackout, go to the Provost Court. [572]

The Court: Haven't some of those gone into the Magistrate Court?

The Witness: Not to my knowledge.

Mr. Ennis: That's all, Captain.

Cross-Examination

By Mr. Anthony:

Q. When did this system begin, this Commissioner of Provost Courts?

A. I don't know, Mr. Anthony, just when that General Order was initiated, but I know that it was in the General Orders at the time they were put out on March 10th.

Q. How long have you held this job of yours?

A. July 18, 1943.

(Testimony of J. Frank Wickhem.)

Q. You said that you had available the statistics for the prior months? A. That's right.

Q. I would like to have your statistics covering the entire period since the initiation of martial law, if you can produce those?

Mr. Ennis: I object to that, your Honor, on the grounds that it is not relevant to the issues here what the Provost Court did since the beginning of martial law, and I don't know whether such statistics are in form to put in. It seems to me it is asking for a great deal of work.

Mr. Anthony: He says they keep regular records. [573]

Mr. Ennis: But they have to be abstracted from the regular records.

The Witness: That's right. I frankly think it can be done but it will entail——

Mr. Anthony: Is it a hard job?

The Witness: It really is, Mr. Anthony.

Mr. Anthony: How about for the year 1943?

The Witness: That could be done.

Mr. Anthony: Fairly simple?

The Witness: That's right.

Mr. Ennis: Have you got those figures presently in any form?

The Witness: We haven't; they will just have to be taken; if you want them divided into cases, they'll have to go through every case and show just what the nature was. Here, if you'll come over here, I'll show you how we did this. (Referring to a list)

(Testimony of J. Frank Wickhem.)

The Court: How did you happen to pick February?

The Witness: Well, your Honor, by reasoning on the thing, that it was the closest to the time of the offense—a complete month which was closest to the time of the offense.

Mr. Anthony: Well, Counsel and I will agree upon what we will ask of you, Captain Wickhem.

Q. Is it a fair statement to say that most of the cases that now come before the Provost Courts involve absenteeism?

A. No, I don't, I won't say that that's true. I think in this particular month there were 51 cases of absenteeism as [574] compared to a total of 1,453.

Q. In the 1,453 you have included all your bail forfeitures, have you not? A. That's right.

Q. Is it a correct statement to say that most of the cases in which persons are imprisoned involve absenteeism?

A. That is a fair statement.

Q. That situation has continued ever since March 10th, is that right? Since March 10th of 1943?

A. I can't state as to that. You mean March 10, 1943, or——

Q. 1943?

A. Well, I think that's a fair statement; you know I wasn't down there prior to July of 1943, but I think that's a fair statement.

Q. Those prosecutions are under what order?

A. General Order 10.

(Testimony of J. Frank Wickhem.)

Q. And by absenteeism you mean what? That word is not mentioned in the General Order, is it?

A. No, that's right. I think the wording of the General Order is "Failure to report to work and work regularly." I don't remember the exact wording but I think that's it in substance.

Q. Well, is it your understanding that anybody can read that General Order and know whether or not he is guilty of an offense?

A. I think so. [575]

Mr. Ennis: I object, your Honor, on the ground that it calls for speculation as to what other people's powers or rationalizations are.

Mr Anthony: There is nothing in that General Order that says anything about absenteeism. I want to know how these defendants know what they are accused of.

The Court: Well, is that General Order before the Court?

Mr. Anthony: Yes.

The Court: Well, is it in a mass of other stuff that points it out?

Mr. Anthony: That's sewed up tight here, your Honor. I'll have to split it.

The Court: You mean that material that came in attached to the return?

Mr. Anthony: Yes, your Honor.

Mr. Ennis: Have you got a copy of it, Captain?

The Witness: Yes, I have.

Mr. Anthony: That's not been offered in evidence but by the traverse we have admitted the

(Testimony of J. Frank Wickhem.)

issuance of all of these General Orders, so in that sense it is before the Court.

Q. You stated, Captain Wickhem, that you made the policy of the Provost Courts?

A. No, I didn't intend to give that impression.

Q. Or you coordinated the policy?

A. That's right, when the policy is established, then I try to see that it is put into effect in each Court. [576]

Q. What is the policy of the Provost Court?

A. Well, in regard to procedure, for example——

Q. Well, what is it?

A. Do you want me to tell you every step? Well, one of the policies of the Provost Court——

Q. What I'm getting at is this, Captain. I won't refer to the policy of the Federal Court or any other Court that I have knowledge of. You have referred to the policy of the Provost Court. Now, I want to know what that policy is.

A. All right. When I used the word, Mr. Anthony, I intended to take in not only procedure but also matters of practice; for example, clemency, things of that kind, clemency, the fact that it is the policy of the Court that anyone who feels that they should do so or feels that they should have some redress, make an application to the Military Governor to obtain that redress.

Q. Where do you find that in any order?

A. That's it; it's the practice; it's not in the General Orders.

(Testimony of J. Frank Wickhem.)

The Court: Well that's after and behind the Courts, some policy behind the Court, is that what you mean, some policy of some authority that is over, larger than the Court, that can, after the Court is through, dispense justice then according to its view?

The Witness: Well, sir, I consider that a part of procedure; that is, the cases are never completed until the Military Governor has reviewed them and has passed upon them and has passed upon [577] any application for clemency.

Q. Who makes this policy?

A. The Military Governor.

Q. You mean the Commanding General of the Hawaiian Department?

A. I think the Commanding General of the Hawaiian Department, to the best of my knowledge, confers with the official, meaning Colonel Morrison, and the policy is arrived at that way.

Q. And General Richardson, so far as your system of Provost Courts is concerned, makes the policy of the Provost Courts?

A. I think General Richardson is familiar with the way the Courts operate, and that he has made any policy and has knowledge of any policy that is in existence now. That is only my own personal opinion.

Q. Well, then, you don't really know where this policy comes from?

A. Except that it comes from the Executive Office of the Military Governor.

(Testimony of J. Frank Wickhem.)

Q. You referred to the Provost Courts having jurisdiction over civilians during blackout.

A. I referred merely to traffic cases.

Q. How about if there is an assault and battery case during blackout, it wouldn't come before your Court? A. That's right, it would not.

Q. Who determines what Court a case will come before?

A. Well, as I explained to Judge Metzger, when the offense comes in it is routed over in the Police Department either to [578] the civilian court or into the Provost Court, and sometimes cases come over there where the facts will show that it was not maybe a blackout offense—it didn't occur during the blackout. Well, that comes to my desk and I send it back.

The Court: Well, that is in Honolulu only?

The Witness: That's right, your Honor. And in the other outlying islands, why the Prosecutor and the Judge are instructed to see that every charge and every factual situation is such that it comes within the jurisdiction of the Court.

The Court: I didn't want to interrupt you.

Mr. Anthony: That's all right, your Honor.

The Court: May I ask, how do you get your convictions into the City and County Jail?

The Witness: Your Honor, if a sentence is pronounced, the Judge signs a commitment just as he did in the present case.

The Court: Well, a commitment in whose name, directed to whom?

(Testimony of J. Frank Wickhem.)

The Witness: Directed to the Oahu Prison or the Warden of the Prison, of the City and County Jail.

The Court: To any prison in the Territory?

The Witness: That's right, your Honor.

The Court: What authority does the custodian or jailer of these jails have to recognize and take into custody such prisoners?

The Witness: That is something that I can't answer, your Honor. I have been informed that there has been an order by one of the Commanding Generals—whether it was General Richardson or [579] probably his predecessor—ordering the various wardens or the jailers to take and keep in custody Provost Court prisoners.

The Court: Do you pay for their keep in the various prisons?

The Witness: To the best of my knowledge, your Honor, that arrangement is taken care of at the time that the amount collected by the Provost Court is turned over to the Territory. The Attorney General probably knows more about that than I.

The Court: The Territory is one thing, in a fiscal way, and the City and County is another. What about your local ones?

The Witness: I don't know about that, your Honor.

The Court: Well, how do you get them out of jail?

(Testimony of J. Frank Wickhem.)

The Witness: At the time that their sentence is served, why they are released.

The Court: And not before?

The Witness: Unless they have been given clemency by the Office of the Military Governor.

The Court: Well, suppose they have been given clemency, how far could that clemency go, all the way to a pardon?

The Witness: It would go all the way to a complete release, your Honor.

The Court: And how is that executed?

The Witness: *And* order is drawn in the Office of the Military Governor and it is taken down to the particular jail or prison where the particular individual is kept.

The Court: Well, these prisoners are sent to the jails by the Provost Court, and are they in a different class than those [580] sent in by the Courts of the Territory, the Magistrate Courts?

The Witness: I can't answer that definitely, your Honor, but it is my impression that they are just in the general run of prisoners in the County Jail.

The Court: This morning the witness for the Petitioner in this case came in here and said he was assigned to hard labor. I don't know whether the charge was really a misdemeanor or a felony charge, but it looked like a misdemeanor with all of the aspects presented here. Do your mittimuses provide for hard labor?

The Witness: It is within the General Order

(Testimony of J. Frank Wickhem.)

to sentence either with or without hard labor, but most of the sentences or the mittimuses do not read that way. I heard that testimony also and I don't know by whose authority he was given hard labor.

The Court: Well, it is designated on the mittimus whether the prisoner is to serve hard labor or not?

The Witness: To the best of my knowledge it is, your Honor.

The Court: Are you familiar with the form of the mittimus?

The Witness: Yes, your Honor.

The Court: I noticed that mittimus running in the name of the Territory. I believe it did, as I looked at it.

Mr. Anthony: Yes, it does.

The Court: Was I right?

Mr. Anthony: Yes, addressed to the high sheriff.

The Court: Well, I think that's all. I just wanted to get some facts.

Mr. Anthony: Is your Honor finished with his examination? [581]

The Court: Yes.

By Mr. Anthony:

Q. Captain Wickham, what law do you enforce in the Provost Court?

A. The orders of the Military Governor.

Q. How about traffic cases?

A. They are made in a particular order. We enforce the Territorial statutes in regard to traffic and also the City and County ordinances.

(Testimony of J. Frank Wickhem.)

Q. Is that in the military orders? A. Yes.

Q. Which one?

A. It is my knowledge that it is in General Order 2, General Order 2, Mr. Anthony.

Q. What paragraph?

A. Paragraph 3.01.

Q. And that says what, that you are authorized to enforce the laws of——

A. The Territory of Hawaii or any ordinance, resolution, by-law or regulation or rule of any city, city and county, or counties, and other municipal or subdivision of the Territory of Hawaii.

Q. That means authorized, the Provost Courts are authorized? A. That's right.

Q. There is nothing obligatory about it, however? A. No, that is true. [582]

Q. In other words, if they want to enforce the laws of the Territory in those Courts, the Judges will do it, and if they didn't want to they won't do it?

A. Well, they try to follow the General Orders.

Q. Well, the General Orders just authorize the Courts to do it? A. That's right.

Q. Presumably the language means what the words say; all that does is give a discretion in that Judge, isn't that a fact?

A. Yes, that's right, that's the way it reads.

Q. Now, you take an Army or Navy officer who is convicted of driving while drunk, either before or after blackout, would the Provost Court take his license away from him? A. Yes, definitely.

(Testimony of J. Frank Wickhem.)

Q. In every case?

A. Yes, we follow the same practice as the Territorial Courts.

Q. Are you sure about that, Captain Wickhem?

A. Mr. Anthony, I'm certain that every Court has been so instructed.

Q. But you are not certain about the fact?

A. I won't say that instances haven't occurred where the license has not been taken away, but if so, it has been by admission or failure of the Judge to follow the policy of the Court. Every case that I have on here, that I have sat on, or that I have witnessed, Mr. Anthony, since I have been here, they have taken the license away. [583]

Q. Are you familiar with Field Manual 27-5?

A. No, I am not.

Q. It has never come to your attention?

A. No, I know of it but I am not familiar with it.

Q. Are you familiar with Field Manual 27-10, containing the rules of land warfare?

A. No, I am not.

Q. These are official documents of the U. S. Army. Just take a glance at them. (Handing witness two books.)

A. Any particular thing you want me to look at?

Q. The Military Government and Provost Courts. You don't purport to operate under either of these documents, do you? A. No.

Mr. Ennis: Objection, your Honor, on the grounds that it is calling for a legal conclusion.

(Testimony of J. Frank Wickhem.)

I think we should argue those matters out as a matter of law.

Mr. Anthony: Well, I just want to make sure that the witness has never even seen them. And he is the Provost Court Commissioner.

Q. You have never examined either one of these publications, that is true? A. That's true.

Q. Do you know whether anybody else in the Office of the Military Governor is familiar with these?

Mr. Ennis: Objection, your Honor.

The Court: Well, that question only goes as to whether he knows or not. [584]

A. I do not know, Mr. Anthony.

Q. Do you know what buildings the Provost Courts occupied in this Territory during the regime of martial law?

A. I know that they were in the City and County Building, the Police Station, the building where the Police Station was located prior to the time when they moved across the way to the present building.

Q. Occupying the Courtroom of the District Magistrate of the City and County of Honolulu?

A. That's right.

Q. When did they move across the street into the Japanese bank?

A. I can't tell you that but I think it was some time in 1942. I can't tell you definitely.

Q. How about over in Hilo, where do they hold court?

(Testimony of J. Frank Wickhem.)

A. They hold court in the District Court in Hilo, the District Courtroom.

Q. That's the District Magistrate's Court for the District of Hawaii? A. That's right.

Q. Used by the Provost Court for the trial of Provost Court prisoners? A. That's right.

Q. Provost Court cases? Most of them turn out to be prisoners, isn't that a fact?

A. No, that isn't true. [585]

Mr. Ennis: I object.

Q. Now, Captain, this review that you have talked about, that's not made public to any member of the public, is it? A. No, it isn't.

Q. You have never seen that published any place that there is such a thing as a review?

A. No, I have never seen it published.

Q. It doesn't appear in any General Orders?

A. No, it does not.

Q. And it is a fair statement to say that whether or not a person can get a review or remission or discharge lies wholly within the discretion of the Office of the Military Governor?

A. That's a fai statement.

Mr. Anthony: That's all.

The Court: Do you mean to say that there is a review made in the absence of any application for a review?

The Witness: That's right, your Honor. Every case gets a review.

The Court: What's the purpose of that?

(Testimony of J. Frank Wickhem.)

The Witness: So as to determine whether or not an injustice has been done in any way, shape or form; if the Court got out of line.

The Court: Who determines that, some superior judicial official that sits behind the Provost Courts?

The Witness: Well, it's reviewed by at least two officers, your Honor, and then it goes to Colonel Morrison. And I don't [586] know this, I don't know whether he takes those matters up with the General or not, but it is my impression that he definitely does.

The Court: All cases or just such a class of cases like absenteeism and labor cases?

The Witness: Every case, your Honor, excepting bail forfeitures, I presume; as a matter of fact, every case that goes up there.

Mr. Anthony: Do you think that the Commanding General reviews these cases?

The Witness: No, I didn't say that. I think that in cases where there is any question about it, or where there is an outstanding situation, I think it is taken up with the Commanding General, but again I say that is my impression entirely. I know it is reviewed by two officers and finally goes to Colonel Morrison.

The Court: Suppose they concluded that too severe a fine has been assessed and collected, is anything done about that?

The Witness: Yes, your Honor, they either remit the fine in whole or in part or take whatever action there is. If it is an incarceration case, they

(Testimony of J. Frank Wickhem.)

take whatever action there is to remit a portion of that.

By Mr. Anthony:

Q. Have any fines ever been paid back?

A. Yes, I know of some down in the Provost Court.

Q. Provost Court?

A. That's right, where we found out the jurisdiction was wrong—fellows have been called in.

[587]

Q. That's what I'm talking about; that's just where you made a mistake? A. That's right.

Q. Where the reviewing authority came to the conclusion that the fine was excessive, has there ever been a fine paid back?

A. If you are differentiating between a fine which has been paid and one which is not——

Q. That's right, after the money gets into the till?

A. I don't know of any. There may have been.

The Court: Well, does every one of these Provost Courts throughout the Territory have an official reporter, a competent reporter?

The Witness: Yes, they do.

The Court: How long has that practice been established?

The Witness: Well, I can vouch for only the time that I have been there, and I visited every Court. I have seen every court in operation with one exception, that is, the Court on the Island of Lanai, and I know that there has been a re-

(Testimony of J. Frank Wickhem.)

porter present in each instance and I know they are so instructed.

The Court: They take all of the proceedings and all the testimony?

The Witness: They don't take all the proceedings and all the testimony, your Honor. They take —if a case is contested, they take a contested case. If a case is a serious case, such as a drunken driving case or something of that nature, they take the testimony and preserve it, even though the plea is guilty. [588]

The Court: Well, if the plea was guilty, there wouldn't be any testimony?

The Witness: Yes, there is, your Honor. In the Provost Court, even though the plea is guilty, the Court is given not only the authorization but the direct order to determine whether or not the facts justify a finding of guilty, because sometimes a man inadvertently enters a plea of guilty when a set of circumstances show in fact he wasn't guilty.

By Mr. Anthony:

Q. Where do you find that in the orders?

A. It is not in the General Orders but it is the practice, it is Courts-Martial practice and it is the practice that's been followed to my knowledge in the Provost Court.

Q. When did the Provost Courts start keeping records?

A. Well, I can't answer that, Mr. Anthony, because as I say——

(Testimony of J. Frank Wiekhem.)

Q. Was it this year?

A. Oh, no, no, no, I can vouch for the fact that ever since I've been there that complete records have been kept and they were complete records when I came down there.

Q. When did you start that?

A. I didn't start it.

Q. When did you start at your job?

A. July 18, 1942-1943.

Q. 1943? A. That's right. [589]

Q. So at least since that time they have kept complete records? A. That's right.

Q. Are they public records?

A. They are certainly available.

Q. Now, don't equivocate, Captain.

Mr. Ennis: I object to that, your Honor. Let him be allowed to ask a question.

The Witness: May I answer?

The Court: Yes.

The Witness: No, they aren't to this extent: If anyone is going to see the records down there, they have to get the permission of the Military Governor.

Mr. Anthony: In other words, members of the public can go down and as a matter of right examine the records of the Provost Court, is that a fact?

The Witness: That's right.

Mr. Ennis: I move that Counsel's remark about the witness equivocating before he started to answer the question be stricken.

(Testimony of J. Frank Wickhem.)

Mr. Anthony: I have no objection to that being stricken.

The Court: Yes, that may be stricken.

Mr. Anthony: That's all.

Redirect Examination

By Mr. Ennis:

Q. Captain, you spoke of the policies adopted in the Provost Court and also of the review of these cases in the Office of the [590] Military Governor. As a result of the review of the cases, do you arrive at a certain coordination of the activity of the Provost Courts? A. That's right.

Q. Do you in that way make uniform their activity and do you reach policies of procedure?

A. That's right.

Q. Do you communicate——

The Court: You are coupling too many questions in one and getting one answer to the whole. I can't tell from the answer just which question he was answering to.

Q. Well, I'll try and break it up, your Honor. Do you, for example, in going over the fines for first offenses in a particular type of case examine the cases to see whether the Courts are more or less uniform in their treatment of that type of case?

A. That is exactly right. We want the Court sitting in Honolulu or the Court sitting in a comparable area some place else to treat the same offense in the same manner.

(Testimony of J. Frank Wickhem.)

Q. Do you then, in the course of that review form a policy in respect of the fine for a first offense for a particular type of case? A. That's right.

Q. Do you communicate that policy to the Courts involved?

A. That is true. I have done it personally.

Q. And is that the kind of thing you mean when you speak of the policy of the Courts? [591]

A. That's it, exactly.

Q. Does the same kind of activity go on in respect to any remissions of fines or any suspensions of convictions?

A. That I can't answer, Mr. Ennis, as I don't take any part in that.

Q. You do not? A. No.

Mr. Ennis: That's all. Thank you.

Recross Examination

By Mr. Anthony:

Q. This review, Captain, how does that work, is it automatic?

A. Every case is reviewed, Mr. Anthony, automatically as soon as it comes up there.

Q. Was Mr. Duncan's case reviewed?

A. Yes.

Q. That was after he filed his Petition?

A. I don't know when it was but I inquired as to whether or not the case has been reviewed and I know it has been.

Q. Was anybody called to present any views on the review other than the military authorities?

(Testimony of J. Frank Wickhem.)

A. I don't know. Again I say I don't take any part in that procedure, so I don't know just what happened.

Q. Well, are the notes transcribed when a case is reviewed?

A. I don't know that. You see, when the Provost Court sends the record up to the Military Governor's Office, then it goes to the office or officers —two of them—for review. But I take no [592] part in that at all.

Q. I know that, Captain, but as the Coordinator of the Provost Courts you know what the Courts do? A. That's right.

Q. Now, do the Courts actually transcribe their cases, their contested cases, and ship a lot of transcripts up for review?

A. No, they do not. For example, all absenteeism cases, those records are kept and they are all requested when there is an application for clemency. But outside of that transcripts are not written up and sent up.

Q. How can a reviewing officer review a case when he doesn't know what was before the Court below?

A. Well, the only thing they can do is to look at the record insofar as the charge is concerned and the sentence.

Q. The pleadings? A. That's right.

Q. Then arrive at a conclusion whether or not justice was done? A. That's right.

Mr. Anthony: That's all.

(Testimony of J. Frank Wickhem.)

The Court: This policy of getting the Provost Courts all on an equalized plane, so as to synchronize them as to punishment for given offenses under similar conditions, that is something you have originated?

The Witness: No, I haven't, Judge Metzger. I think Eddie Silva tried to do the same thing before me. [593]

The Court: That was to correct flagrant earlier abuses, was it?

The Witness: Well, it was to make the Courts operate in such a way so that the sentences meted out would be commensurate with the offenses.

The Court: Do you think you've got that pretty good?

The Witness: We have tried, your Honor.

The Court: All right.

Mr. Ennis: That's all.

(Witness excused.)

ARTHUR L. MUNDO, Lieutenant Commander, U. S. Navy, retired,

a witness in behalf of the Respondent, being duly sworn, testified as follows:

Direct Examination

By Mr. Ennis:

Q. Will you state your full name and your present title and occupation, please?

A. Arthur L. Mundo, Lieutenant Commander, U. S. Navy, retired.

(Testimony of Arthur L. Mundo.)

Q. How long have you been in the Navy, Judge Mundo?

A. Well, I entered the Navy March 12—no, March 21, 1912.

Q. And how long did you serve in the Navy at that time?

A. I served until I was retired in August of 1920.

Q. What did you do then?

A. I took up the practice of law.

Q. Where were you educated? [594]

A. George Washington University, Washington, D. C.

Q. And of what bar are you a member?

A. I am a member of the bar of the supreme Court of the United States, the bar of the District of Columbia, the state bar of California, and of this bar.

Q. When were you first admitted to the bar?

A. In 1925.

Q. How long did you practice in California?

A. I practiced from 1925 until 1928. Do you want me to continue?

Q. Yes, if you will, Judge.

A. At which time I was appointed by the Board of Supervisors as Township Judge in San Diego Township, which Court later became a municipal Court. On January 5, 1932, I was appointed by the Governor of the State of California as a Judge of the Superior Court of the State of California in and for the County of San Diego.

(Testimony of Arthur L. Mundo.)

Q. How long did you serve in that capacity?

A. I served in that capacity until I was recalled to active duty in the Navy, September 8, 1942.

Q. Ten years?

A. Yes, sir. As a matter of fact, I still have a tenure of office as Judge of the Superior Court.

Q. Will you state very briefly what the jurisdiction of the Superior Court of California is?

A. It is a Court of general jurisdiction. [595]

Q. Civil and criminal?

A. Civil and criminal.

Q. What are your present duties in the Navy, Judge Mundo?

A. I was ordered to return to active duty, for General Court-Martial duty, and I was assigned to the district legal office of the Fourteenth Naval District as an assistant legal officer. My work at that office is upon the General Court-Martial convening in this district, and general legal work.

Q. Are you also assigned as part of your duties to sit as a Judge at the Provost Court in Pearl Harbor?

A. Yes, I was ordered by Admiral Ghormley to sit as Judge of the Provost Court, and by appointment of the Military Governor.

Q. Did you sit as Judge in the case of Lloyd Clifford Duncan, which was tried on March 2, 1944? A. I did.

Q. Do you recall that trial?

A. Yes, sir.

Q. Have you read the transcript of the testi-

(Testimony of Arthur L. Mundo.)

mony which was prepared by the Provost Court reporter at that trial? A. I have.

Q. I show you Respondent's Exhibit 1. (Handing witness a typewritten document.) Can you tell me from the examination of it, Judge, whether it appears to be the original transcript prepared by the reporter?

Mr. Anthony: May I have the same objection to this, your Honor, subject to the motion to strike? [596]

The Court: Yes.

A. That appears to be the original transcript of the testimony taken at that trial.

Q. Is it a complete transcript so far as you recall, Judge, of the testimony that was taken at the trial?

A. As I recall the case, that is the complete transcript.

Q. How long have you been sitting as Provost Court Judge in Pearl Harbor?

A. Since the establishment of the Provost Court at the Navy Yard, in October of last year.

Q. You sit every day?

A. Every day at 8:30 except Sunday.

Q. Do you recall whether there was anything unusual about this particular case?

A. This case was probably a more serious type than we generally have at that Court. Most of the cases are blackout violations and minor traffic offenses. This is the first case of this type that I have had down there.

Q. It was? A. Yes, sir.

(Testimony of Arthur L. Mundo.)

Q. And the sentence that you gave of imprisonment for six months, was that based upon your view of the circumstances of the case?

Mr. Anthony: Just a minute. I object to any comment on the part of the witness as to the fairness or unfairness of his sentence. I don't think that is proper matter of evidence. He [597] gave his best judgment at the time. Why should he come in now and say——

M. Ennis: The Petitioner testified, your Honor, that when he appeared before the Provost Court that it was his impression that the case was decided against him and the proceeding was unfair. Now Counsel brought that out on the Petitioner's own testimony. It has been the cause of going afield in this way.

The Court: The Petitioner testified that he thought the offense he committed, if any, was a trivial one and that he anticipated, by reason of his views of the seriousness of it, that it would be disposed of with a light fine or something of that kind. Now, he was disappointed, that's all.

Mr. Ennis: He stated, your Honor, that the Court proceeding was conducted as if he were already guilty and not merely a question of the offense.

Mr. Anthony: No, he did not. He said that the Judge conducted himself in an entirely impersonal manner.

Mr. Ennis: I agree to that.

Mr. Anthony: There has been no reflection whatsoever on this witness.

(Testimony of Arthur L. Mundo.)

Mr. Ennis: No reflection on the Court but reflection on the conduct of the trial.

Mr. Anthony: He assumed that he would be guilty. Now, that's a fairly reasonable assumption of anybody going into a Provost Court. [598]

Mr. Ennis: I move that that be stricken, your Honor.

The Court: That may be stricken.

Mr. Ennis: Now, as I recall, Petitioner's Counsel has constantly stated that this case, if it were tried in the Civil Court, the sentence would be much less than given in this case.

The Court: Well, that's neither here nor there, whether he stated that. That carries no weight.

Mr. Ennis: Well, let me rephrase the question.

Q. Judge, was the sentence you gave in this case based upon your experience with the cases that come before you in the Provost Court and your general judicial experience?

A. Mr. Ennis——

Mr. Anthony: I object to him commenting on the sentence. I don't see that it has any bearing on this case.

The Court: I don't think so. I would rather not hear that. You did pronounce sentence, and the presumption is that you did it according to your own judgment, and that's the end of that.

Mr. Ennis: Is the objection sustained?

The Court: Yes.

Mr. Ennis: Exception. That's all.

Mr. Anthony: No questions.

(Witness excused.)

Mr. Ennis: Would the Court care to adjourn at this time?

The Court: Yes. We will now adjourn until tomorrow morning. I'll remove the other case from tomorrow's calendar and we will go ahead with this case tomorrow morning. [599]

Mr. Ennis: Well, now, the Court will recall that we stated that we would finish on Tuesday.

The Court: We will jump Monday in this case on account of the arraignments of the indictment cases on Monday. That has already been set. And on account of the number of people involved, and the probable hardship that it might work on a number of them, I don't like to interfere with that. And we had that agreement, as I understood yesterday, that after Saturday we would adjourn until Tuesday morning for this case. That was understood and agreed.

Mr. Ennis: Yes. Well, on the question that we were discussing here, your Honor, whether it will be necessary for us to call witnesses on Tuesday, whether we coudn't finish up Tuesday without a session tomorrow—but if I might have a moment to talk to my associates. I didn't realize we might sit on Saturday.

The Court: Yes.

Mr. Ennis: Well, your Honor, of course we are prepared to go ahead tomorrow, but it wouldn't be a full session as long as those we had in the last few days. And if we might have a short session tomorrow morning, with the understanding that we then finish up Tuesday, that will be all right.

The Court: That's all right. It is entirely agreeable if you can do enough tomorrow and get through with your evidence Tuesday. That will be very good.

Mr. Ennis: Oh, yes.

Mr. Anthony: That is agreeable to me. [600]

The Court: This case is adjourned until tomorrow morning at nine o'clock.

(The hearing adjourned at 12:25 o'clock, p. m.) [601]

Honolulu, T. H.
April 8, 1944
9:06 o'clock, a. m.

(The hearing was continued.)

The Clerk: Habeas Corpus Docket No. 298, in the matter of the application of Lloyd C. Duncan for a writ of Habeas Corpus, case called for further hearing.

Mr. Anthony: Ready, your Honor.

Mr. Ennis: If the Court please, it is the Respondent's purpose this morning to prove the allegations of paragraphs II and XV of the return and answer on pages 18 and 19, in respect to the allegations about the population of the Territory and the part of that population which is of Japanese nationality, and part of the population which has both American and Japanese nationality. I might say at the outset that the Supreme Court of the United States, in Hirabayashi vs. United States,

recites in some detail in the opinion the situation as to dual citizenship of American citizens of Japanese ancestry on the mainland of the United States.

Now, it is the purpose of the Government to rely on judicial notice, as relied on the judicial notice in that case, and to rely upon the authorities cited by the Supreme Court. But in addition to that, to the degree that we are able, we wish to give the Court whatever specific information we can on the subject by way of reference to the population statistics of the Territory, and by reference to the Japansese law in some greater detail than [602] appears in the Supreme Court opinion.

Mr. Anthony: Your honor, the Petitioner's position as to that is that it is entirely irrelevant to any issue in this case. I will make appropriate objection as the evidence is introduced.

Mr. Ennis: I offer in evidence as Respondent's Exhibit 7, six sheets containing population statistics of the Territory, prepared by the Board of Health of the Territory. I believe that opposing Counsel agrees with me as to the accuracy of these figures. Is there objection to them being received in evidence?

Mr. Anthony: No objection to them being received in evidence.

The Court: Received as Exhibit 7.

(Respondent's Exhibit "No. 7" was received in evidence.)

BOARD'S EXHIBIT No. 7

BOARD OF HEALTH
TERRITORY OF HAWAII

POPULATION ESTIMATES AS OF JULY 1, 1943
AND JULY 1, 1944

Area	July 1, 1943	Jan. 1, 1944	July 1, 1944
City of Honolulu	211,847	214,769	217,692
City & County of Honolulu (Exclusive of Honolulu City)	119,724	122,069	124,414
City of Hilo	24,158	24,531	24,904
County of Hawaii (Exclusive of Hilo City)	42,904	42,198	41,491
County of Kalawao	450	447	444
County of Kauai	32,791	32,619	32,448
County of Maui	51,489	51,237	50,986
Territory	483,363	487,870	492,379

Race	July 1, 1943	Jan. 1, 1944	July 1, 1944
Hawaiian	12,617	12,210	11,802
Part Hawaiian	56,932	58,055	59,179
Puerto Rican	8,775	8,854	8,932
Caucasian	155,664	159,172	162,684
Chinese	29,621	29,717	29,813
Japanese	162,690	163,478	164,268
Korean	6,941	6,956	6,970
Filipino	49,261	48,563	47,863
All Others	862	865	868
Territory	483,363	487,870	492,379

Compiled by Bureau of Vital Statistics.
October 28, 1943

[Stamped]: [Illegible]. Mar. 28, 1941.
[In longhand]: [Illegible initials]. 3/31/41.

U. S. DEPARTMENT OF COMMERCE
Bureau of the Census
Washington

March 10, 1941 — Sixteenth Census of the
Hawaii: Population — United States: 1940

RACIAL COMPOSITION OF THE POPULATION OF HAWAII

The Hawaiians, part-Hawaiians, and Caucasians in Hawaii, taken as a single group, increased much more rapidly than the Japanese inhabitants of the Territory during the past decade, and now outnumber the latter element of the population, according to a preliminary report compiled from returns of the Sixteenth Decennial Census, released today by Acting Director Vergil D. Reed of the Bureau of the Census, Department of Commerce.

The Hawaiians and part-Hawaiians increased 26.4 percent, from 50,860 in 1930 to 64,310 in 1940; the Caucasians, 40.8 percent, from 73,702 to 103,791; and the Japanese, 13.1 percent, from 139,631 to 157,905. Thus the Hawaiians and part-Hawaiians increased twice as rapidly, and the Caucasians three times as rapidly, as the Japanese. The Filipino population of Hawaii, which numbered 63,052 in 1930, declined 16.6 percent to 52,569 in 1940.

This report presents comparative figures, for the last three Census years, for the several racial groups which constitute the population of Hawaii. It supplements the report entitled "Summary of Preliminary Population Figures for the Territory of Hawaii: 1940," issued September 3, 1940. All figures in the table below are final.

Board's Exhibit No. 7—(Continued)

POPULATION OF HAWAII, BY RACE: 1940, 1930 AND 1920

Race	1940	1930	1920	Percent of total			Percent of change	
				1940	1930	1920	1930-1940	1920-1930
Total	423,330	368,336	255,912	100.0	100.0	100.0	14.9	43.9
Hawaiian and part-Hawaiian	64,310	50,860	41,750	15.2	13.8	16.3	26.4	21.8
Caucasian	103,791	73,702	49,140	24.5	20.0	19.2	40.8	50.0
Chinese	28,774	27,179	23,507	6.8	7.4	9.2	5.9	15.6
Filipino	52,569	63,052	21,031	12.4	17.1	8.2	-16.6	199.8
Japanese	157,905	139,631	109,274	37.3	37.9	42.7	13.1	27.8
Korean	6,851	6,461	4,950	1.6	1.8	1.9	6.0	30.5
Puerto Rican	8,296	6,671	5,602	2.0	1.8	2.2	24.4	19.1
Other	834	780	658	.2	.2	.3	6.9	18.5

[In pencil]: 11037

Board's Exhibit No. 7—(Continued)

POPULATION, BY AGE, FOR THE TERRITORY OF HAWAII: CENSUS, 1940

Age	Territory of Hawaii Total	%	Oahu Total	%	Hawaii Total	%	Kauai Total	%	Niihau Total	%	Maui Total	%
All Ages	423,330	100.00	257,664	100.00	73,276	100.00	35,636	100.00	182	100.00	46,919	100.00
Under 5 Years	40,085	9.47	22,937	8.90	7,418	10.12	3,414	9.58	42	23.08	2,255	11.20
5 - 9 Years	43,431	10.26	24,571	9.54	8,343	11.39	3,806	10.68	34	18.68	5,721	12.19
10 - 13 Years	38,132	9.01	21,596	8.38	7,404	10.11	3,325	9.33	14	7.69	5,038	10.74
14 Years	9,363	2.21	5,199	2.02	1,870	2.55	837	2.35	4	2.20	1,244	2.65
15 - 19 Years	48,336	11.42	29,738	11.54	8,323	11.36	3,893	10.92	19	10.44	5,554	11.84
20 - 24 Years	51,075	12.06	36,837	14.30	6,128	8.36	2,949	8.28	11	6.04	4,252	9.06
25 - 29 Years	42,332	10.00	27,236	10.57	6,410	8.75	3,667	10.29	11	6.04	3,861	8.23
30 - 34 Years	33,388	7.89	20,163	7.83	5,664	7.73	3,253	9.13	15	8.24	3,322	7.08
35 - 44 Years	51,000	12.04	30,752	11.93	8,639	11.79	4,734	13.28	17	9.34	5,345	11.39
45 - 54 Years	32,603	7.70	19,463	7.55	5,973	8.15	2,783	7.81	6	3.30	3,603	7.68
55 - 64 Years	20,517	4.85	11,952	4.64	4,139	5.65	1,735	4.84	4	2.20	2,270	4.84
65 - 74 Years	10,107	2.39	5,553	2.15	2,348	3.20	954	2.68	3	1.65	1,107	2.36
75 Years & Over	2,961	0.70	1,667	0.65	617	0.84	286	0.80	2	1.10	347	0.74

Age	Lanai Total	%	Kahoolawe Total	%	Molokai Total	%	Honolulu City* Total	%	Rural Oahu Total	%	Outlying Islands*1 Total	%	Palmyra Total	%
All Ages	3,720	100.00	1	100.00	5,340	100.00	179,326	100.00	78,338	100.00	560	100.00	32	100.00
Under 5 Years	379	10.19	—	—	639	11.97	16,947	9.45	5,990	7.65	1	0.18	—	—
5 - 9 Years	360	9.68	—	—	596	11.16	17,919	9.99	6,652	8.49	—	—	—	—
10 - 13 Years	266	7.15	—	—	489	9.16	15,808	8.82	5,788	7.39	—	—	—	—
14 Years	72	1.94	—	—	137	2.57	3,828	2.13	1,371	1.75	—	—	—	—
15 - 19 Years	333	8.95	—	—	463	8.67	20,293	11.32	9,445	12.06	13	2.32	—	—
20 - 24 Years	335	9.00	—	—	406	7.60	21,342	11.90	15,495	19.78	150	26.79	7	21.87
25 - 29 Years	485	13.04	—	—	525	9.83	18,165	10.13	9,071	11.58	127	22.68	10	31.25
30 - 34 Years	435	11.69	—	—	441	8.26	14,069	7.85	6,094	7.78	90	16.07	5	15.63
35 - 44 Years	605	16.26	—	—	786	14.72	21,951	12.24	8,801	11.23	115	20.54	7	21.87
45 - 54 Years	226	6.08	—	—	493	9.23	14,210	7.92	5,253	6.70	53	9.46	3	9.38
55 - 64 Years	181	4.87	1	100.00	224	4.19	9,077	5.06	2,875	3.67	11	1.96	—	—
65 - 74 Years	37	0.99	—	—	105	1.97	4,353	2.43	1,200	1.53	—	—	—	—
75 Years & Over	6	0.16	—	—	36	0.67	1,364	0.76	303	0.39	—	—	—	—

* Palmyra Island not included in Honolulu City population figures.

*1 The outlying islands (Baker, Canton, Enderbury, Howland, Jarvis, Johnston, and Midway), although not under the jurisdiction of the Territory of Hawaii, are for census purposes included in the totals for the Territory and for Honolulu County.

Board's Exhibit No. 7—(Continued)

POPULATION, BY RACE, FOR THE TERRITORY OF HAWAII: CENSUS, 1940

Race	Territory of Hawaii Total	%	Oahu Total	%	Hawaii Total	%	Kauai Total	%	Niihau Total	%	Maui Total	%
All Races	423,330	100.00	257,664	100.00	73,276	100.00	35,636	100.00	182	100.00	46,919	100.00
Hawaiian	14,375	3.40	7,064	2.74	3,451	4.71	732	2.05	156	85.71	2,102	4.48
Part Hawaiian	49,935	11.80	31,367	12.17	7,901	10.78	2,647	7.43	19	10.44	6,007	12.80
Caucasian	103,788	24.52	82,086	31.86	9,821	13.38	4,464	12.53	1	0.55	6,588	14.04
Chinese	28,774	6.80	24,554	9.53	1,832	2.50	862	2.42	—	—	1,304	2.78
Filipino	52,570	12.41	19,067	7.40	12,845	17.53	10,149	28.48	—	—	7,659	16.32
Japanese	157,904	37.30	83,385	32.36	34,865	47.58	15,464	43.39	6	3.30	21,656	46.16
Other Races	15,984	3.77	10,141	3.94	2,561	3.50	1,318	3.70	—	—	1,603	3.42

	Lanai Total	%	Kahoolawe Total	%	Molokai Total	%	Outlying Islands*1 Total	%	Palmyra Total	%	Honolulu City* Total	%	Rural Oahu Total	%
All Races	3,720	100.00	1	100.00	5,340	100.00	560	100.00	32	100.00	179,326	100.00	78,338	100.00
Hawaiian	115	3.09	—	—	729	13.65	21	3.75	5	15.63	5,457	3.04	1,607	2.05
Part Hawaiian	263	7.07	—	—	1,645	30.81	73	13.04	13	40.62	25,583	14.27	5,784	7.38
Caucasian	138	3.71	1	100.00	262	4.91	414	73.93	13	40.62	50,892	28.38	31,194	39.82
Chinese	71	1.91	—	—	138	2.58	12	2.14	1	3.13	22,445	12.52	2,109	2.69
Filipino	1,567	42.12	—	—	1,283	24.03	—	—	—	—	6,887	3.84	12,180	15.55
Japanese	1,310	35.22	—	—	1,217	22.79	1	0.18	—	—	60,593	33.79	22,792	29.10
Other Races	256	6.88	—	—	66	1.23	39	6.96	—	—	7,469	4.16	2,672	3.41

* Palmyra Island not included in Honolulu City population figures.

*1 The outlying islands (Baker, Canton, Enderbury, Howlitt, Jarvis, Johnston, and Midway), although not under the jurisdiction of the Territory of Hawaii, are for census purposes included in the totals for the Territory and for Honolulu County.

Board's Exhibit No. 7—(Continued)

JAPANESE POPULATION BY AREA AND BY BROAD AGE GROUPS FOR MALES FOR THE TERRITORY OF HAWAII, 1940 and 1930, AND BY COUNTIES AND PRINCIPAL CITIES, 1940.—(All 1940 figures in this table are preliminary and subject to revision)

County or city		Total	Male	Female	Males by broad age groups		
					Under 18	18 to 44	45 and older
Territory of Hawaii, total	1940	157,849	82,784	75,065	34,795	31,348	16,641
	1930	139,631	75,008	64,623	36,774	21,849	16,385
Percent of increase		*13.0	10.4	16.2	—5.4	43.5	1.6
	1940						
Honolulu County		83,383	43,475	39,908	17,656	17,771	8,048
Honolulu city		60,591	31,221	29,370	12,199	13,476	5,546
Remainder of county		22,792	12,254	10,538	5,457	4,295	2,502
Hawaii County		34,864	18,271	16,593	7,955	6,057	4,259
Greater Hilo city		11,207	5,659	5,548	2,339	2,185	1,135
Remainder of county		23,657	12,612	11,045	5,616	3,872	3,124
Maui County		24,084	12,877	11,207	5,799	4,495	2,583
Wailuku city		3,591	1,864	1,727	825	711	328
Remainder of county		20,493	11,013	9,480	4,974	3,784	2,255
Kauai county		15,469	8,131	7,338	3,384	3,001	1,746
Kalawao County		49	30	19	1	24	5

* The corresponding percent of increase in the total population (all races) of the Territory of Hawaii was 14.9.

vs. Lloyd C. Duncan

Board's Exhibit No. 7—(Continued)

BOARD OF HEALTH

TERRITORY OF HAWAII

POPULATION ESTIMATES AS OF JULY 1, 1940 AND JULY 1, 1941

Area	July 1, 1940	Jan. 1, 1941	July 1, 1941
City of Honolulu	180986	190573	200158
City & County of Honolulu (Exclusive of Honolulu City)	79899	95121	110345
City of Hilo[1]	24341	23504	22667
County of Hawaii: (Exclusive of Hilo City)	49222	47475	45731
County of Kalawao	465	465	464
County of Kauai	35956	34718	33479
County of Maui	55785	54140	52495
Territory	426654	445996	465339

Race	July 1, 1940[2] Total	July 1, 1940[2] Citizens	July 1, 1940[2] Non-Citizens	Jan. 1, 1941 Total	July 1, 1941 Total	July 1, 1941 Citizens	July 1, 1941 Non-Citizens
Hawaiian	14359	14359	—	14303	14246	14246	—
Part-Hawaiian	50470	50470	—	51457	52445	52445	—
Puerto Rican	8322	8322	—	8391	8460	8460	—
Caucasian	106381	103700	2681	124004	141627	139299	2328
Chinese	28834	24245	4589	29035	29237	24886	4351
Japanese	157990	121312	36678	158762	159534	124351	35183
Korean	6854	4517	2337	6867	6881	4628	2253
Filipino	52607	17109	35498	52334	52060	18050	34010
All Others	837	807	30	843	849	832	17
Territory	426654	344841	81813	445996	465339	387197	78142

[1] Sec. 2801 R. L. 1935 as amended by Act 103 S. L. 1941

[2] Revised estimates.

Compiled by Bureau of Vital Statistics.

H. F. HARALSON, M. D.
H. F. Haralson
Territorial Commissioner of Public Health

[Endorsed]: Filed 4-8-44.

The Court: In a summarizing way, what does your Exhibit 7 show?

Mr. Ennis: Exhibit 7, your Honor, gives the population estimates of the Territory as of July 1, 1944 and 1943.

The Court: Not July 1, 1944, is it?

Mr. Ennis: Your Honor, these are estimates of population based upon——

The Court: What the population will be of that date?

Mr. Ennis: Yes, that's right, your Honor.

The Court: That estimate was made by someone in the Board of Health of the Territory?

Mr. Ennis: Yes, it was submitted to Counsel by Dr. Lee, the Director of the Board of Health, made in his office; and the estimates are based upon the last official Federal Census of 1940 [603] and their projection of the Federal Census.

The Court: Do they take the progression and increase up to a certain time and just continue right through and arrive at that figure?

Mr. Ennis: Yes, and they also take into consideration the death rates and deductions of that character, your Honor.

The Court: Well, what is your figure?

Mr. Ennis: Well, the total figure for July 1, 1943, is 483,363; and for January 1, 1944, it is 487,870; and for July, 1944, the estimated figure——

The Court: 483——

Mr. Ennis: 487,870; and for July, 1944, 492,379. Now, the exhibit breaks those total figures down

according to counties in the Territory and also according to races. The second sheet of the exhibit——

The Courtff Well, what is it you want to call the Court's attention to there, is it a matter of races or otherwise?

Mr. Ennis: The exhibit is offered, your Honor, to support the allegation of the return, which we wish to bring to the Court's attention, and to prove as a basis for some of the testimony on Tuesday that the appraisals of the military situation in the Territory, which is the basis for the contention of the need of the continuation of martial rule in the respect that it still exists here, is based in part upon the nature of the population, and in part upon the relationship of part of the population to [604] the enemy which is being fought in this area of the war.

The Court: What is the nature of this population?

Mr. Ennis: Well, your Honor, the exhibit will show that the population in large part is of Japanese ancestry, a factor which the Supreme Court of the United States in the Hirabayashi case said was a military consideration which the Military Commanders could take into account in formulating the curfew law which was placed in effect on the West Coast at the beginning of the war.

The Court: Well, what is that proportion?

Mr. Ennis: Well, the proportion roughly, your Honor, is about a third of the total population.

I'll be glad to give you the figures from the exhibit, if you'd like to have them.

The Court: Yes, I want to get at the meat of your exhibit. I'm unalterably opposed to just massing exhibits into the record and saying, well, it's before the Court. I want you to present it to the bench.

Mr. Ennis: Well, that portion of the population which is of the Japanese race is—giving you the figures relative to the last three figures that I gave you for the same dates—162,690, 163,478, and 164,268.

The Court: That's Japanese, racially Japanese?

Mr. Ennis: That's right, your Honor, yes.

The Court: It doesn't show how many of them are aliens, or does it; and how many are native born?

Mr. Ennis: This particular exhibit and this part of the [605] evidence does not show, your Honor, the part that are alien and native born, but the testimony will do that, which I am about to produce. I think that's all that's necessary to say about the exhibit, your Honor, and I will produce the witness.

The Court: All right.

ANDREW S. WONG, Lieutenant, U. S. Army, a witness in behalf of the Respondent, being duly sworn, testified as follows:

Direct Examination

By Mr. Ennis:

Q. Will you state your full name and your present occupation, please?

A. Andrew S. Wong, Officer, U. S. Army.

Q. When did you go on active duty in the U. S. Army? A. February 20, 1942.

Q. What was your occupation before that?

A. I was Director of the Bureau of Vital Statistics.

Q. Here in the Territory? A. Yes.

Q. How long did you occupy that position?

A. I was appointed to that position in September, 1941, and occupied it up to February 20th.

Q. And you, of course, are familiar with the way the records of the Bureau were kept during your occupancy of that office? A. I am. [606]

Q. Have you prepared from the records and do you have with you a statistical survey of the population figures for the years 1924 until the present time, to 1941? A. Yes, I have.

Q. Will you state to the Court what the records of the Bureau show as to the births, the registration of births of American citizens of Japanese ancestry for those years, registered with both the Board of Health and also as reported by the Japanese Consulate as registered with the Consulate?

(Testimony of Andrew S. Wong.)

A. The records of the Bureau show, reports either in the official documents or publications, the number of births of Japanese ancestry reported with the Japanese Consulate. These figures are available annually. The records also show a breakdown by racial groups of the births registered at the Board of Health in the Territory. The records I have here give a summary of the births reported from 1915 to 1941, inclusive, to both agencies.

Q. Will you explain how the Board of Health obtained these figures from the Japanese Consulate and what was the purpose of it?

A. The Board of Health has always endeavored to make its birth registrations as complete as possible. This effort is in accordance with the policy of the Bureau of the Census to increase the completeness of registration to the extent whereby all states and territories would be eligible to enter the birth registration area. We realize that there were a considerable [607] number of births prior to 1921 which were registered at the Japanese Consulate and were not registered at the Territory. Therefore, in an effort to get as many births as possible into the Territorial records, a request was made to the Japanese Consulate to have them encourage the reporting of births to the Board of Health.

The second reason was for use of these figures in the calculation of the population estimates every year. And it was necessary to secure data pertaining to the population from all agencies concerned. And when all this data was obtained and

(Testimony of Andrew S. Wong.)

assembled locally, the population estimates were then made.

Q. Did the Japanese Consulate report the births every year?

A. We have records for each year.

Q. From the Board of Health?

A. From the Board of Health.

Q. From the report that the Japanese Consulate gave you? A. Yes.

Mr. Ennis: We'll mark this paper, entitled "Births of Japanese in the Territory of Hawaii," as Respondent's Exhibit for identification.

The Clerk: Exhibit No. 8 for identification.

(Received and marked "Respondent's Exhibit No. 8 for identification.")

Q. Lieutenant, I show you Respondent's Exhibit No. 8 for identification. (Showing witness a typewritten piece of paper.) Is that a summary from the records of the Board of Health of the [608] births reported both to the Territory and by the Japanese Consulate to the Territory?

A. Yes, sir, it is.

Q. That is an accurate summary from the records? A. Yes.

Mr. Ennis: I offer Respondent's Exhibit 8 for identification in evidence.

Mr. Anthony: I have no objection, your Honor.

The Court: Received in evidence Exhibit 8. Tell me what it is.

Mr. Ennis: If the Court please, this exhibit by

(Testimony of Andrew S. Wong.)

years, from 1925 on, shows the number of births reported to the Japanese Consulate and also the number of births of persons of Japanese ancestry reported to the Territory.

The Court: Would there be a duplication there or how is it that the same births are not reported?

Mr. Ennis: Yes, your Honor, the same person might report both to the Territory and to the Japanese Consulate. There is also shown on this exhibit the difference between the total report of the Japanese Consulate and the larger number reported to the Territory. And as a basis for showing that, only those persons who reported to the Japanese Consulate are treated for purposes of our calculations as being possibly dual citizens.

The Court: All right.

(Respondent's Exhibit "No. 8" was received in evidence.) [609]

RESPONDENT'S EXHIBIT No. 8

BIRTHS OF JAPANESE IN THE TERRITORY OF HAWAII
and
NUMBER REPORTED TO THE JAPANESE CONSULATE
for the
FISCAL YEAR 1915-1941

Fiscal Year	Births reported to Japanese Consulate			Total births in Terr. of Hawaii		
	Total	Males	Females	Total	Males	Females
1915	4,606	•	•	3,377	1,821	1,556
1916	4,639	•	•	3,662	1,974	1,688
1917	4,918	•	•	4,260	2,321	1,939
1918	5,086	•	•	4,579	2,365	2,214
1919	4,807	•	•	4,391	2,356	2,035

(Testimony of Andrew S. Wong.)

Fiscal Year	Births reported to Japanese Consulate Total		Males	Females		Total births in Terr. of Hawaii Total	Males	Females
1920	5,286		*	*	/	4,963	2,636	2,327
1921	5,001		*	*	/	4,910	2,624	2,286
1922	4,682		*	*	/	5,590	2,994	2,596
1923	4,629		*	*	/	5,689	2,954	2,735
1924	4,493		*	*	/	5,820	2,961	2,859
1925	4,335	(1,851)	*	*	/	6,186	2,233	2,953
1926	5,251	(343)	*	*	/	5,594	2,921	2,673
1927	2,756	(2,995)	*	*	/	5,751	2,878	2,873
1928	1,935	(3,213)	*	*	/	5,148	2,649	2,499
1929	1,724	(3,460)	889	835	/	5,184	2,667	2,517
1930	1,325	(3,330)	681	644	/	4,655	2,416	2,239
1931	1,186	(3,386)	611	575	/	4,572	2,353	2,219
1932	982	(3,416)	490	492	/	4,398	2,258	2,140
1933	825	(3,097)	449	403	/	3,922	2,024	1,898
1934	778	(2,915)	407	371	/	3,693	1,863	1,830
1935	731	(2,834)	390	341	/	3,565	1,803	1,762
1936	681	(2,570)	860	321	/	3,251	1,631	1,620
1937	660	(2,458)	353	307	/	3,118	1,593	1,525
1938	636	(2,527)	326	310	/	3,163	1,636	1,527
1939	691	(2,439)	368	323	/	3,130	1,615	1,515
1940	765	(2,572)	401	364	/	3,337	1,721	1,616
1941	860	(2,388)	466	394	/	3,248	1,625	1,623
		45,794						

* Not available.

Compiled by Bureau of Vital Statistics.

[Endorsed]: Filed 4-8-44.

By Mr. Ennis:

Q. Lieutenant Wong, from the statistics of the Board of Health, what is the official estimate of American born Japanese in the Territory as of July 1, 1941? A. 124,351.

Q. And taking into account the births reported to the Japanese Consulate, and the births reported

(Testimony of Andrew S. Wong.)

to the Bureau of Vital Statistics, have you calculated the number of persons of Japanese ancestry whose births were not registered with the Japanese Consulate? A. Yes, I have.

Q. What is that number?

A. The number of Japanese births——

Mr. Anthony: Just a minute. I object to that question, if your Honor please. The Lieutenant hasn't said that these were recorded with the Japanese Consulate. He has said that this is what the Consulate reported to him. There is no evidence that anybody was recorded with the Japanese Consulate.

Mr. Ennis: Well, I'll reframe the question accordingly.

Q. Lieutenant, have you made a calculation based upon the number of births reported to the Board of Health by the Japanese Consulate as having been recorded with the Japanese Consulate, and the number of births reported directly to the Board of Health?

A. Yes. The Japanese births which were reported by the Consulate to the Bureau of Vital Statistics and reported to the Japanese Consulate, the number is approximately 45,794. [610]

Q. And for what years is that total?

A. From 1925 to 1941, inclusive.

Q. Have you also calculated the number of applications by persons of Japanese ancestry during that period, applications for expatriation?

(Testimony of Andrew S. Wong.)

A. It was not a calculation. It is information from confidential sources.

Q. Well, now, just a minute, Lieutenant. You have figures based on information from confidential sources as to the number of applications for expatriation? A. That's right.

Q. Will you state that number?

Mr. Anthony: I object to that, if the Court please. There is no basis laid for any such testimony by this witness. He is testifying from public records, and now he comes into Court and says he has some confidential testimony he'd like to give testimony about.

Mr. Ennis: Well, I'd like to explain that. If Counsel doesn't wish the information—the purpose of this figure is to provide a deduction from the number of dual citizens claimed by the Respondent. It is information obtained from a source that we cannot reveal, but the use of the figure results in a lesser number of dual citizens by calculating the expatriates than we will otherwise reach. And if Counsel has objection to the figure, why we won't put it in.

Mr. Anthony: I haven't heard any evidence yet about any [611] dual citizens, your Honor. I'd like to know what one is.

Mr. Ennis: It is our purpose, your Honor, to produce evidence on the Japanese law on Japanese citizenship, and it is our desire to lay a factual basis as to what persons were reported as registered with them, because that is an important fac-

(Testimony of Andrew S. Wong.)

tor under Japanese laws, which we will undertake to prove. Now, as I say, the only purpose of this figure is to concede that a substantial number of persons of Japanese ancestry in the Territory applied for expatriation, and we are willing to concede for the purposes of calculation that every applicant was expatriated. Probably a number of applications were not acted upon.

Now, the only difficulty with the testimony, as I see it, is that we are not prepared to give the source of the information.

The Court: The objection must be sustained, however.

Mr. Ennis: Well, now, to make the record clear, Lieutenant Wong, will you state in a general way what your present duties are?

A. I am an assistant to the officer in charge for Military Intelligence on matters pertaining to internal security.

Q. Have you, in the course of your duties, obtained this figure of the number of applications by persons of Japanese ancestry in this Territory for expatriation from Japanese citizenship?

A. Yes.

Mr. Ennis: For the record, your Honor, I will again ask the witness to state that number.

Mr. Anthony: Well, my present objection, your Honor, is [612] that it is entirely out of order. We don't even know that there is such a thing as a dual citizen. Now, I don't see why we don't find out what he is talking about first. What is a

(Testimony of Andrew S. Wong.)

dual citizen? I have examined this subject with some degree of care and I am not prepared and I wouldn't be prepared to testify as to what a dual citizen is.

The Court: Well, expatriation would be a definite thing. If he knows and can tell how he knows what the number of applications were for expatriation before the Japanese Consulate, that is, persons of Japanese ancestry born here in the Territory of Hawaii, that would be competent evidence, at least as to the matter contended for by the Respondent.

Mr. Ennis: Well, I don't want to quarrel about offers of proof, your Honor. Of course, we could put in our evidence of the Japanese law first, which we contend relates to how many persons registered with the Japanese Consulate. I think it is entirely logical to put in the factual information first.

Mr. Anthony: If the Court please, I will withdraw my objection. I will address myself later to the relevancy of the entire line; it is getting pretty far afield.

By Mr. Ennis:

Q. Will you state that figure, Lieutenant?

A. 15,537.

The Court: During what period of time?

The Witness: From 1915 up to the year 1941, inclusive.

Q. Have you calculated an adjustment of those last two [613] figures, namely, persons not registered with the Japanese Consulate and applicants

(Testimony of Andrew S. Wong.)

for expatriation, to take care of deaths, migrations and incomplete birth registrations?

A.—Yes, I have calculated an adjustment of individuals who were reported to the Japanese Consulate and not reported to the Board of Health, as well as considered the factors of migration and deaths which might be applied to a population group concerned.

Q. That is a general calculation? A. Yes.

Q. What is that figure? A. 1,125.

Q. From these calculations what is the total of non-dual citizens that you have calculated?

A. 60,206.

Q. And you have calculated an estimated number of dual citizens by subtracting that figure, from the total Japanese population of the Territory?

A. Yes, I have.

Q. And that figure is? A. 64,145.

Q. Have you also obtained from the records of the Board of Health the number of alien Japanese in the Territory? A. Yes, I have.

Q. And what is that figure? A. 35,183.

Q. And the total of the calculated number of dual citizens [614] and aliens is? A. 99,328.

Mr. Ennis: I request that this memorandum, dated April 7, 1944, be marked as Respondent's Exhibit 9 for identification.

(Received and marked "Respondent's Exhibit 9 for identification.")

The Court: What is that last figure you gave, Lieutenant?

(Testimony of Andrew S. Wong.)

The Witness: 99,328.

Q. I show you Respondent's Exhibit 9 for identification. Is that a memorandum containing the figures which you have calculated? (Showing a typewritten sheet of paper to the witness.)

A. Yes, I have.

Q. Did you prepare this memorandum?

A. Yes, I did.

Mr. Ennis: I offer it in evidence. (Showing a typewritten sheet of paper to Mr. Anthony.)

Mr. Anthony: All right.

The Court: Exhibit 9.

(Respondent's Exhibit "No. 9" was received in evidence.)

RESPONDENT'S EXHIBIT No. 9

Memorandum: 7 April 1944

Estimate of Dual Citizens of Japanese Ancestry in Territory of Hawaii as of 1 July 1941

1.	Official estimate American-born Japanese (Bureau of Vital Statistics)		124,351
2.	Japanese Births reported to Bureau of Vital Statistics and not reported to Japanese Consulate	45,794	
3.	Applications for expatriation	15,537	
		61,331	
4.	Adjustment including deaths, migration and incomplete birth registration	1,125	
5.	Non dual citizens		60,206
6.	Estimated No. of dual citizens		64,145

Aliens	35,183
Dual citizens	64,145
Total	99,328

[Endorsed]: Filed 4-8-44.

(Testimony of Andrew S. Wong.)

Mr. Ennis: That's all, Lieutenant.

Cross Examination

By Mr. Anthony:

Q. The Board of Health does not purport to keep, by virtue of the statutes and regulations, any information relating to dual citizens, is that not correct? [615]

A. Yes. And there was no such intention at the time data relative to Japanese births were gathered.

Q. You didn't intend to obtain information relative to dual citizens, that wasn't part of the program, was it? A. No.

Q. You were just tapping all sources to find the total births in the Territory? A. Yes.

Q. These figures that you have submitted, do they include the Japanese that are now fighting over in Italy? A. Yes.

Q. Do they include Japanese that have been migrated, detainees or evacuees from this area?

A. Any movements following 1941 are, of course, not included. These figures are up to July 1, 1941.

Q. As a matter of fact, there may be a large number of Americans of Japanese ancestry who are presently serving in the Armed Forces that are squarely within this figure of 64,145?

A. That is possible.

Q. Lieutenant, at any time did the Armed Forces make any inquiry as to whether a person was a dual citizen before he was accepted for military service? Remember when the "Victory Volun-

(Testimony of Andrew S. Wong.)

teers" were presenting themselves for service in this Territory? You recall that, don't you?

A. Yes.

Q. Roughly 10,000 of them? [616]

A. Yes.

Q. It is a fact, is it not, that there was no inquiry made as to whether they were dual citizens at that time by the Army?

A. I am not at liberty to discuss that information.

Q. Is that a military secret?

A. Under the circumstances, I can't answer.

Q. I don't see how that could affect the security of this Territory.

The Court: I can't follow that.

Mr. Ennis: Perhaps the Lieutenant doesn't understand. Would it be fair to say that your question was a matter of public knowledge, where the applicants were asked publicly whether or not they were dual citizens?

Mr. Anthony: No, I'm asking him whether the applicants were asked.

Q. Will you state to the Court how this "Victory Volunteer" program was handled by the Army, briefly?

A. That recruiting program came in a section different from the activity performed by the section of the office with which I am concerned.

Q. I understand that, but how was the program operated?

(Testimony of Andrew S. Wong.)

A. You mean as far as the activity of our own office was concerned with respect to the selection of these individuals who volunteered, or just on the procedure by which they volunteered?

Q. Well, what did they do first? [617] Did they fill in blanks?

A. Yes, they filled in blanks.

Q. Is there any place on any of those blanks the question, "Are you a dual citizen"—or anything like that?

A. There was information pertaining to the race.

Q. What race you were?

A. The racial background, the pertinent personal history information concerning the parents of the individuals and a complete summary of activity.

Q. I can understand that, but was there any inquiry in those blanks directed to the eliciting of the answer to the question, Are you a dual citizen. A. That I don't know.

Q. Can you ascertain that for us?

A. I would be able to take a look at the form that they filled out and determine just whether it included that provision or not.

Mr. Ennis: If Counsel is interested in that particular item, I will ascertain what the fact is.

By Mr. Anthony:

Q. At the time the AJA's were organized, do you recall that incident?

A. Yes, I do.

(Testimony of Andrew S. Wong.)

Q. That body of men consisted of what, Americans of Japanese ancestry?

A. That's right. [618]

Q. Did they ask those boys before they enlisted in the Armed Forces whether or not they were dual citizens?

A. That information was all obtained.

Q. I'm asking you whether or not that was asked of these boys?

A. I don't know.

Q. You said that information was all obtained. What do you mean by that?

A. I should say that information was available.

Q. What information?

A. Concerning their birth place and data concerning the birth places of their parents.

Q. You don't mean to intimate to the Court that you ascertained whether or not these boys were dual citizens before permitting them to join the AJA? A. No, I don't.

Q. Is it fair to say, then, Lieutenant, that at the time these boys were inducted int the Armed Forces, including this group that is now fighting in Italy, there was no question raised in the selectivity of that group as to whether or not they were dual citizens?

A. I intimated at the beginning I don't know exactly whether they inquired as to that specific information.

(Testimony of Andrew S. Wong.)

Mr. Anthony: Mr. Reporter, will you read his answer?

(The Reporter read the last answer.)

Q. How about your office? [619]

A. As I stated previously, complete background information was available, and therefore whether they asked it or not of the applicant, I don't know.

Q. You still haven't answered my question. What did your office do?

A. I don't know.

Q. You are assistant to whom?

A. I said I am one of the assistant officers to the officer in charge.

Q. Of internal security?

A. Pertaining to matters relating to internal security.

Q. Lieutenant, you are familiar with the change of heart in regard to the induction of Japanese into the Armed Forces, are you not, that has recently taken place? A. Yes.

Q. And they are now being inducted just like any other American citizens? A. Yes.

Q. In the operation of the Selective Service is there any inquiry made as to whether or not a person is a dual citizen?

A. I don't believe there is, but I can't say definitely as to what the form provides for because I haven't seen those.

Mr. Ennis: You have nothing to do with the operation of the Selective Service System, have you?

(Testimony of Andrew S. Wong.)

The Witness: No, sir. [620]

By Mr. Anthony:

Q. Do you have any figures on the number of Japanese that are in the Armed Forces that are of Hawaiian birth? A. No, sir.

Q. Your office does not have those figures?

A. You asked me whether I had those figures.

Q. No, I mean your office. When I say "you" I mean your office.

A. Of the number of those who were inducted?

Q. Who are presently serving in the Armed Forces of the United States.

A. Yes, we have.

Q. Do you have any objection to producing these?

Mr. Ennis: Your Honor please, I think that any request to produce information ought to be addressed to Counsel and not to the witness who is here to give information from the Bureau of Vital Statistics. Now, I have not interfered with the cross-examination because I want to be very lenient about it and let the witness explain anything he knows, but I think requests for information ought to be addressed to me.

Mr. Anthony: All right, I address it to you.

Mr. Ennis: I will ascertain and advise you.

Mr. Anthony: I ask Counsel to produce the number of persons of Japanese ancestry in the Territory of Hawaii that are now serving in the Armed Forces of the United States, those who are casualties, the number of persons that have been

(Testimony of Andrew S. Wong.)

evacuated from [621] the Territory of Hawaii to relocation centers, and the number of persons of Japanese ancestry that are presently interned within the Territory. That's all, Lieutenant.

The Court: The number that are in employment within military areas by the Army and Navy, is that available?

Mr. Anthony: Well, the entire population is in a military area, your Honor. That would be the figure of 124,000 unless your Honor means military reservations.

The Court: Reservations.

Mr. Anthony: I think that would be of interest, too, Army and Navy reservations. I don't believe there are any employed in the Navy.

Mr. Ennis: The number of persons of Japanese ancestry employed in the military reservations in the Territory.

The Court: Yes, not in the Territory but in the military reservations and in military work.

Mr. Ennis: Is it military reservations throughou the United States as a whole, your Honor?

The Court: No, in the Territory.

Mr. Anthony: I think your question should be a little broader than reservations. For instance, Punahou Campus has a large number of employees for the U. S. E. D.

The Court: Well, that is in the nature of a reservation at the present time. It is all under military guard there, and you've got to have a pass

(Testimony of Andrew S. Wong.)

to get into it. I would consider that a military reservation. [622]

Mr. Anthony: Very well, your Honor. (To witness): That is all. Thank you very much.

Mr. Ennis: Lieutenant, do you know of your own knowledge whether the military authorities investigated the "Volunteer" applicants of Japanese ancestry before they were accepted into that corps?

The Witness: Yes.

Mr. Ennis: They did?

The Witness: Yes.

Mr. Ennis: That's all.

Mr. Anthony: Just a minute, Lieutenant. Every person that is inducted into the Selective Service has an investigation made of him, isn't that a fact? You answer a complete form under the Selective Service?

The Witness: Yes, that's right.

Mr. Anthony: In that sense you make an investigation?

The Witness: In that sense the Selective Service individuals make an investigation; to what degree or to what extent, that may vary.

Mr. Ennis: But so far as the "Volunteer" group, before the Selective Service System was applied to persons of Japanese ancestry, do you know whether the applicants to go into this "Volunteer" group were investigated by the military authorities?

The Witness: Yes.

(Testimony of Andrew S. Wong.)

Mr. Ennis: Were some chosen and some not chosen, do you know? Unless you know of your own knowledge don't answer it. [623] Do you know whether any applicants were rejected?

The Witness: Yes.

Mr. Ennis: That's all.

Mr. Anthony: Why were they rejected, Lieutenant?

The Witness: They were rejected on the basis of possibly adverse information which might be contained on the individuals themselves, and which by their selection might have constituted a potential problem relevant to security in the Army.

Mr. Anthony: That's all.

Mr. Ennis: That's all. Thank you, Lieutenant.

(Witness excused.)